



DEPARTMENT OF JUSTICE

48 CFR Chapter 28

[Docket No. JMD 155]

RIN 1105-AB54

Streamlining of DOJ Acquisition Regulations (JAR)

AGENCY: Justice Management Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice is proposing to revise the Justice Acquisition Regulations (JAR), in its entirety in order to update and streamline agency procurement actions consistent with the Federal Acquisition Reform Act, and the Federal Acquisition Streamlining Act. The JAR supplements the executive branch-wide Federal Acquisition Regulations (FAR) to address matters specific to the Department of Justice relating to its procurement of goods and services. It covers mostly internal policies and procedures, but also includes some rules governing private entities doing business with the Department.

DATES: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: If you wish to provide comment regarding this rulemaking, you must submit comments, identified by the agency name and reference Docket No. JMD 155, by one of the two methods below.

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the website instructions for submitting comments. The electronic Federal Docket Management System at www.regulations.gov will accept electronic comments until 11:59 p.m. Eastern Time on the comment due date.

- Mail: Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Tara M. Jamison, Director, Office of Acquisition Management, 145 N Street NE, Room 8W.210, Washington, DC, 20530. To ensure proper handling, please reference the agency name and Docket No. JMD 155 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Tara M. Jamison, Director, Office of Acquisition Management, Justice Management Division, 145 N Street NE, Room 8W.210, Washington, DC, 20530, (202) 616-3754 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via the one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department of Justice (Department) also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at www.regulations.gov. Such information includes personally identifying information (PII) (such as your name, address, etc.). Interested persons are not required to submit their personally identifying information in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly-accessible www.regulations.gov site without redaction.

Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of www.regulations.gov. To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** section above for agency contact information.

II. Discussion.

A. Background - The FAR, the OFPP Act, and the JAR.

When Federal agencies acquire supplies or services using appropriated funds, the purchase is governed by the Federal Acquisition Regulations (FAR), set forth at title 48 of the CFR, chapter 1, parts 1 through 53, and any agency regulations that implement or supplement the FAR.

The Office of Federal Procurement Policy Act (OFPP), as codified in 41 U.S.C. 1707, provides the authority for an agency to issue acquisition regulations that implement or supplement the FAR. This authority ensures that Government procurements are handled fairly and consistently, that the Government receives overall best value, and that the Government and contractors both operate under a known set of rules.

The Justice Acquisition Regulations (JAR) are set forth at title 48 CFR, chapter 28, parts 2801 through 2852, and provide procurement regulations that supplement the FAR to address matters specific to the Department of Justice ("the Department" or "DOJ") relating to its acquisition of goods and services. As such, the JAR covers only those areas where agency implementation is required by the FAR, or where DOJ policies and procedures exist that supplement FAR coverage.

B. Purpose of the Proposed Regulatory Action.

The revisions proposed in this rule will, when finalized, align internal departmental guidance in the JAR with the FAR and remove outdated and duplicative requirements. The revisions will revise the existing regulation promulgated at 63 FR 16118-01 on April 2, 1998, corrected at 63 FR 26738-01, May

14, 1998, and amended at 64 FR 37044-01, July 9, 1999 (together, the “current regulation”). Among other things, the revisions will: 1) update definitions and descriptions, 2) streamline certain sections, 3) remove extraneous procedural information that applies only to DOJ’s internal operating procedures, 4) delete outdated information, 5) incorporate new regulatory sections to align with internal bureau procedures as appropriately contained in DOJ policy orders and policy instructions, and 6) simplify other parts for efficiency.

This rulemaking effort creates an efficient JAR that is more straightforward and less burdensome. The revised JAR will supersede the current regulation in its entirety.

C. Relation of the FAR to the JAR.

The FAR contains many requirements related to agency procedures, which will not be repeated in DOJ’s revision of the JAR. If the JAR does not include provisions supplementing the FAR under the corresponding part or subpart, it is because the FAR language is considered sufficient. Where the JAR states “in accordance with bureau procedures” or “in accordance with agency procedures,” this does not mean that the bureau or the agency must have a procedure. It is intended that the bureau or agency procedures are to be followed if they exist, but does not mean that the bureau or the agency necessarily has a formal written procedure. Where neither the JAR nor bureau procedures address a FAR subject, the FAR guidance is to be followed. The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

D. Summary of Noteworthy Changes.

Most of the proposed changes to 48 CFR chapter 28 relate to internal Department policies and procedures that do not impact the public. For example, the revisions identify the individuals within the Department who will exercise particular responsibilities set forth in the FAR, and whether such responsibilities may be delegated. There are, however, two provisions that impact the public. Part 2833 contains revisions to the process for filing and deciding agency protests of procurement decisions. In addition, the proposed revisions include a new section 2852.212-4, which is a FAR deviation that sets forth certain terms and conditions that will apply to all software licenses.

E. Other Changes and Effect on non-Department Entities.

While most of the changes to the JAR proposed by this rule relate to internal policies and procedures, some changes govern matters relating to private entities selling goods or services to the Department. In particular, the proposed rule includes changes related to the filing and deciding of procurement protests filed with the Department, and also includes a FAR deviation that establishes certain terms and conditions that will be incorporated in all software licenses with the Department.

Some subparts/subsections that are being removed addressed matters that are now addressed in new subparts/subsections with different numbering, while some subparts/subsections are being removed altogether. The removal of sub-parts as proposed by this rule merely eliminates from the JAR provisions that are either already in the FAR or that only pertain to internal policy guidance. None of the subparts or subsections being removed altogether addressed matters affecting persons or entities external to the Department. To the extent matters addressed in such removed subpart/subsections are incorporated into internal Department guidance documents, this will not affect persons or entities external to the Department.

Attached to this proposed rule is an Appendix that lists the sections of the JAR that are being proposed for removal and/or renaming. The Appendix will not be codified.

III. Regulatory Certifications

Executive Orders 12866, and 13563 - Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Orders 12866 and 13563. This rule is primarily limited to agency organization, management and personnel as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a "regulation" as defined by that Executive order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. JMD has examined the economic, budgetary, and policy implications of its regulatory action, and has determined that the impact on the public is minimal. The regulation mainly relates to internal Department policies and procedures that do not impact the public.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed rule applies primarily to DOJ internal operating procedures and would generally be business neutral. DOJ estimates that no cost impact would result from this rule update for individual business.

Executive Order 13132 - Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 - Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Justice Management Division has determined that this action is a rule relating primarily to agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties, and, accordingly, is not a "rule" as that term is used by the Congressional Review Act. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule imposes no information collection or recordkeeping requirements.

Signing Authority

In accordance with Paragraph 8 of Attorney General Order 1687-93, the undersigned is authorized to sign and submit this document to the Office of the Federal Register for publication electronically as an official document of the Department of Justice.

List of Subjects

48 CFR Parts 2801, 2802, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2819, 2827, 2834, 2836, 2837, 2845, 2850, and 2852

Government procurement.

48 CFR Part 2803

Conflict of interest, Government procurement.

48 CFR Part 2804

Classified information, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 2822

Government procurement, Individuals with disabilities.

48 CFR Part 2823

Environmental protection, Government procurement.

48 CFR Part 2825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 2828

Government procurement, Insurance, Surety bonds.

48 CFR Part 2829

Government procurement, Taxes.

48 CFR Parts 2830, 2831, and 2832

Accounting, Government procurement.

48 CFR Part 2833

Administrative practice and procedure, Government procurement.

48 CFR Part 2839

Computer technology, Government procurement.

48 CFR Part 2841

Government procurement, Reporting and recordkeeping requirements, Utilities.

48 CFR Part 2842

Accounting, Freight, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 2846

Government procurement, Reporting and recordkeeping requirements, Warranties.

48 CFR Parts 2848 and 2849

Government procurement, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, chapter 28 of title 48 of the CFR is proposed to be revised to read as follows:

Chapter 28 - Department of Justice

Subchapter A - General

PART 2801 - DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

PART 2802 - DEFINITIONS OF WORDS AND TERMS

PART 2803 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 2804 - ADMINISTRATIVE MATTERS

Subchapter B - Competition and Acquisition Planning

PART 2805 - PUBLICIZING CONTRACT ACTIONS

PART 2806 - COMPETITION REQUIREMENTS

PART 2807 - ACQUISITION PLANNING

PART 2808 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

PART 2809 - CONTRACTOR QUALIFICATIONS

PART 2810 - MARKET RESEARCH

PART 2811 - DESCRIBING AGENCY NEEDS

PART 2812 - ACQUISITION OF COMMERCIAL ITEMS

Subchapter C - Contracting Methods and Contract Types

PART 2813 - SIMPLIFIED ACQUISITION PROCEDURES

PART 2814 - SEALED BIDDING

PART 2815 - CONTRACTING BY NEGOTIATION

PART 2816 - TYPES OF CONTRACTS

PART 2817 - SPECIAL CONTRACTING METHODS

Subchapter D - Socioeconomic Programs

PART 2819 - SMALL BUSINESS PROGRAMS

PART 2822 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 2823 - ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

PART 2825 - FOREIGN ACQUISITION

Subchapter E - General Contracting Requirements

PART 2827 - PATENTS, DATA, AND COPYRIGHTS

PART 2828 - BONDS AND INSURANCE

PART 2829 - TAXES

PART 2830 - COST ACCOUNTING STANDARDS ADMINISTRATION

PART 2831 - CONTRACT COST PRINCIPLES AND PROCEDURES

PART 2832 - CONTRACT FINANCING

PART 2833 - PROTESTS, DISPUTES, AND APPEALS

Subchapter F - Special Categories of Contracting

PART 2834 - MAJOR SYSTEM ACQUISITION

PART 2836 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PART 2837 - SERVICE CONTRACTING

PART 2839 - ACQUISITION OF INFORMATION TECHNOLOGY

PART 2841 - ACQUISITION OF UTILITY SERVICES

Subchapter G - Contract Management

PART 2842 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

PART 2845 - GOVERNMENT PROPERTY

PART 2846 - QUALITY ASSURANCE

PART 2848 - VALUE ENGINEERING

PART 2849 - TERMINATION OF CONTRACTS

PART 2850 - EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subchapter H - Clauses and Forms

PART 2852 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subchapter A - General

PART 2801 - DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Subpart 2801.1 - Purpose, Authority, Issuance

Sec.

2801.101 Purpose.

2801.105 Issuance.

2801.105-2 Arrangement of regulation.

2801.106 OMB approval under the Paperwork Reduction Act.

Subpart 2801.3 - Agency Acquisition Regulations

2801.304 Agency control and compliance procedures.

Subpart 2801.4 - Deviations from the FAR and JAR

2801.403 Individual deviations.

2801.404 Class deviations.

2801.404-70 Requests for class deviations.

Subpart 2801.6 - Career Development, Contracting Authority, and Responsibilities

2801.601 General.

2801.604 Contracting Officer's Representative (COR).

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2801 - DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Subpart 2801.1 – Purpose, Authority, Issuance

2801.101 Purpose.

(a) The Justice Acquisition Regulation (JAR) provides agency guidance, in accordance with Federal Acquisition Regulation (FAR) 1.301(a)(2), and establishes, in this chapter, procurement regulations that supplement the FAR, 48 Code of Federal Regulations (CFR) chapter 1, and must be utilized conjunction with the FAR.

(b)(1) The JAR contains Department of Justice (DOJ) policies that govern DOJ's acquisition process or otherwise control acquisition relationships between DOJ's contracting activities and contractors. The JAR contains –

(i) Requirements of law;

(ii) Deviations from the FAR requirements; and

(iii) Policies that either have a significant effect beyond the internal procedures of DOJ or a significant cost or administrative impact on contractors or offerors.

(2) Relevant internal DOJ policies, procedures, guidance, and information not meeting the criteria in paragraph (b)(1) of this section are issued by DOJ in other announcements, internal policies, procedures, or guidance.

2801.105 Issuance.

2801.105-2 Arrangement of regulation.

The JAR is subdivided into parts, which correspond to FAR parts. The numbering system permits the discrete identification of every JAR paragraph. This numbering system permits immediate identification of each JAR part with coverage of the same subject matter and same numbering system as in the FAR. Supplementary material for which there is no counterpart in the FAR is identified by a numerical suffix of 70 or higher in the final position of the reference number.

Figure 1 to 2801.105-2 - Illustration of numbering system

FAR 1.201 Maintenance of the FAR
JAR 2801.201-70 Maintenance of the JAR

2801.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and the Office of Management and Budget's (OMB) implementing regulations at 5 CFR part 1320, require that reporting and recordkeeping requirements affecting ten (10) or more members of the public be cleared by OMB. The OMB control number for the collection of information under this chapter is 1103-0018.

Subpart 2801.3 - Agency Acquisition Regulations

2801.304 Agency control and compliance procedures.

Pursuant to FAR 1.304, the Senior Procurement Executive (SPE) is responsible for ensuring that bureau acquisition guidance and directives do not restrain the flexibilities found in the FAR. For this reason, bureaus shall forward any bureau acquisition guidance to the SPE upon issuance. The SPE has the authority to revoke any guidance or directive considered restrictive of the regulations found in the FAR.

Subpart 2801.4 - Deviations from the FAR and JAR

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR that affect only one contract action shall be approved by the Head of the Contracting Activity (HCA) or designee.

2801.404 Class deviations.

Requests for class deviations from the FAR or JAR shall be submitted to the SPE. The SPE will consult with the chairperson of the Civilian Agency Acquisition Council (CAAC), as appropriate, and send his/her recommendations to the Chief Acquisition Officer (CAO). The CAO will grant or deny requests for such deviations. Requests for deviations involving basic ordering agreements, master type contracts, or situations where multiple awards are made from one solicitation are considered to involve more than one contract and, therefore, are considered class deviation requests.

2801.404-70 Requests for class deviations.

Requests for approval of class deviations from the FAR or the JAR, for any solicitation that will result in multiple awards, shall be forwarded to the SPE. Such requests will be signed by the Bureau Procurement Chief (BPC).

Subpart 2801.6 - Career Development, Contracting Authority, and Responsibilities

2801.601 General.

(a) In accordance with Attorney General Order 1687-93, the authority vested in the Attorney General (AG) with respect to contractual actions for goods and services is delegated to the following officials to serve as HCAs:

- (1) Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF);
- (2) Director, Bureau of Prisons (BOP);
- (3) Administrator, Drug Enforcement Administration (DEA);
- (4) Director, Federal Bureau of Investigation (FBI);
- (5) Director, Federal Prison Industries (FPI/UNICOR);
- (6) Inspector General, Office of the Inspector General (OIG);

(7) Assistant Attorney General, Office of Justice Programs (OJP);

(8) Director, U.S. Marshals Service (USMS); and

(9) Assistant Attorney General for Administration (AAG/A) (for the Offices, Boards, and Divisions).

(b) The acquisition authority delegated to the officials in paragraph (a) of this section may be re-delegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations, unless otherwise prohibited by the FAR or JAR. Such re-delegated authority shall expressly state whether it carries the power of re-delegation of authority.

2801.604 Contracting Officer's Representative (COR).

Contracting officers may appoint individuals to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as a Contracting Officer's Representative (COR). When a COR is to be designated, contracting officers shall include the clause at JAR 2852.201-70 in all contracts. A COR's authority is limited to the authority set forth in the subject clause.

PART 2802 - DEFINITIONS OF WORDS AND TERMS

Subpart 2802.1 - Definitions

Sec.

2802.101 Definitions.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2802 - DEFINITIONS OF WORDS AND TERMS

Subpart 2802.1 - Definitions

2802.101 Definitions.

Throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

(a) *Agency* means the Department of Justice.

(b) *Bureau* means contracting activity. (See “contracting activity” in this subpart.)

(c) *Bureau Procurement Chief* or *BPC* means the supervisory official who is directly responsible for supervising, managing, and directing all contracting offices of the bureau.

(d) *Cardholder* means an individual entrusted with a Government Purchase Card.

(e) *Chief Acquisition Officer* or *CAO* means the official appointed to assist the head of the agency and other agency officials to ensure the mission of the agency is achieved through the management of the agency’s acquisition activities.

(f) *Chief of the Contracting Office* means that supervisory official who is directly responsible for supervising, managing and directing a contracting office.

(g) *Contracting activity* means a component within the Department which has been delegated procurement authority to manage contracting functions associated with its mission (see 2801.601(a)).

(h) *Department* or *DOJ* means the Department of Justice.

(i) *Head of the Contracting Activity* or *HCA* means those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activity.

(j) *JAR* means the Department of Justice Acquisition Regulation in this chapter.

(k) *JMD* means the Justice Management Division.

(l) *OIG* means DOJ’s Office of the Inspector General.

(m) *Suspension and Debarment Official* or *SDO* means the employee designated to impose suspension and debarment for the Department of Justice.

(n) *Senior Procurement Executive* or *SPE* means the official designated to be responsible for management direction of the Department of Justice procurement system, including implementation of unique procurement policies, regulations, and standards of the Department of Justice.

PART 2803 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1 - Safeguards

Sec.

2803.101 Standards of conduct.

2803.101-3 Agency regulations.

2803.104 Procurement integrity.

2803.104-7 Violations or possible violations.

Subpart 2803.2 - Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the Gratuities clause.

2803.204 Treatment of violations.

Subpart 2803.3 - Reports of Suspected Antitrust Violations

2803.301 General.

Subpart 2803.4 – Contingent Fees

2803.405 Misrepresentation or violations of the Covenant Against Contingent Fees.

Subpart 2803.8 - Limitations on the Payment of Funds to Influence Federal Transactions

2803.806 Processing suspected violations.

Subpart 2803.9 - Whistleblower Protections for Contractor Employees

2803.901 Definitions.

2803.905 Procedures for investigating complaints.

2803.906 Remedies.

2803.908 Pilot program for enhancement of contractor employee whistleblower protections.

2803.908-70 Whistleblower protection in General Non-Disclosure Agreement.

2803.908-71 Whistleblower protection in Intelligence Related Non-Disclosure Agreement.

Subpart 2803.10 - Contractor Code of Business Ethics and Conduct

2803.1004 Contract clauses.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2803 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1 - Safeguards

2803.101 Standards of conduct.

2803.101-3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 5 CFR part 2635.

2803.104 Procurement integrity.

2803.104-7 Violations or possible violations.

(a) Upon receipt of information regarding a violation or possible violation of 41 U.S.C. 2102, 2103, or 2104, the contracting officer must make the determination required by FAR 3.104-7(a) and follow the procedures prescribed therein.

(1) Make the determination required by FAR 3.104-7(a) and follow the procedures prescribed therein.

(2) [Reserved]

(b) The individual referenced in FAR 3.104-7(a)(1) is the BPC.

(c) The HCA or designee must follow the criteria contained in FAR 3.104-7(g) when delegating authority under this subpart.

(d) The HCA or designee shall refer information regarding actual or possible violations of section 41 U.S.C. 2102, 2103, or 2014 to the OIG or other office designated in Attorney General Order 1931-94.

(e) If the HCA or designee, after receiving information relating to a violation, or possible violation, determines that award or extension of a contract potentially affected by the violation is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then the HCA may authorize the contracting officer to award or extend the contract after notification to the OIG or other office designated in Attorney General Order 1931-94.

(f) The HCA will advise the contracting officer as to the action to be taken. Criminal and civil penalties, and administrative remedies, may apply to conduct that violates 41 U.S.C. Chapter 21, see FAR 3.104-8.

(g) The contracting officer shall advise the SPE in writing of all allegations of violations. The contracting officer must describe the alleged violation as well as actions taken.

Subpart 2803.2 - Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the Gratuities clause.

DOJ personnel shall report suspected violations of the gratuities clause, FAR 52.203-3, to the contracting officer or chief of the contracting office in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the time period in which it occurred, the behavior or action the gratuity was intended to influence, and the persons involved. The contracting officer or chief of the contracting office, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the HCA, or designee.

2803.204 Treatment of violations.

(a) The HCA or designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) may be taken. In reaching a decision, the HCA or designee shall consult with the contracting activity's legal advisor and the OIG or other office designated in Attorney General Order 1931-94.

(b) The SPE shall be advised of all instances where violations have been determined to have occurred and any action taken as a result.

(c) Prior to taking any action against the contractor, the HCA or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204(b).

Subpart 2803.3 - Reports of Suspected Antitrust Violations

2803.301 General.

DOJ personnel shall report suspected antitrust violations to the Attorney General (AG) through the Assistant Attorney General (AAG) for the Antitrust Division (ATR).

(a) The report for the AG shall be addressed to: Attorney General, Attention: AAG/ATR, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington D.C. 20530.

(b) The report shall include:

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

Subpart 2803.4 - Contingent Fees

2803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Employees who suspect, or have evidence of, violations by a contractor of the Covenant Against Contingent Fees, see FAR subpart 3.4, must report the matter to the contracting officer or appropriate higher authority, in accordance with agency procedures. Employees who suspect or have evidence of fraudulent or criminal activities must report the matter to the SPE and the OIG.

Subpart 2803.8 - Limitations on the Payment of Funds to Influence Federal Transactions

2803.806 Processing suspected violations.

Evidence of suspected violations of 31 U.S.C. 1352, Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, may be submitted in accordance with agency procedures to the SPE and the OIG or other office designated in Attorney General Order 1931-94.

Subpart 2803.9 - Whistleblower Protections for Contractor Employees

2803.901 Definitions.

As used in this subpart –

Covered Individual is defined as an employee of a contractor at any tier required by the Department to sign a Non-Disclosure Agreement (NDA), whether the NDA is directly between the Covered Individual and the Department or between the Covered Individual and a contractor, and whether the NDA is required by a contract or otherwise (e.g., pursuant to a vendor demonstration, product trial, market research effort, or other non-contract efforts).

General NDA means an NDA, other than an Intelligence-Related NDA, required by the Department to be signed by a Covered Individual.

Intelligence-Related NDA means any NDA required by the Department to be signed by a Covered Individual who is connected with the conduct of an intelligence or intelligence-related activity.

Non-Disclosure Agreement means any nondisclosure or confidentiality agreement, policy, or form, including the agreements in Standard Forms 312 (Classified Information Nondisclosure Agreement) and 4414 (Sensitive Compartmented Information Nondisclosure Agreement).

2803.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint filed pursuant to FAR 3.904, the Inspector General shall conduct an investigation and provide a written report of findings to the HCA, or designee.

(b) The HCA or designee will ensure that the Inspector General provides the report of finding to the individuals and entities specified in FAR 3.905(c).

(c) The complainant and contractor shall be afforded the opportunity to submit to the HCA or designee a written response to the report of findings within 30 days of receipt of the report. The HCA or designee may grant extensions of time to file a written response.

(d) The HCA or designee may request that the Inspector General conduct additional investigative work on the complaint at any time.

2803.906 Remedies.

(a) Upon determination that a contractor has subjected one of its employees to a reprisal for providing information as set forth in FAR 3.906(a), the HCA or designee may take one or more actions specified in FAR 3.906(a).

(b) Whenever a contractor fails to comply with an order issued pursuant to FAR 3.906(a), the HCA or designee shall notify the Attorney General and request that DOJ file an action for enforcement of such order in the United States District Court.

2803.908 Pilot program for enhancement of contractor employee whistleblower protections.

2803.908-70 Whistleblower protection in General Non-Disclosure Agreement.

The contracting officer shall ensure that any General NDA that DOJ requires a Covered Individual to sign contains the required Whistleblower Protection Provision at JAR 2852.203-70.

2803.908-71 Whistleblower protection in Intelligence-Related Non-Disclosure Agreement.

The contracting officer shall ensure that any Intelligence-Related NDA that DOJ requires a Covered Individual to sign contains the required Whistleblower Protection Provision at JAR 2852.203-71.

Subpart 2803.10 - Contractor Code of Business Ethics and Conduct

2803.1004 Contract clauses.

The information required to be inserted in the clause at FAR 52.203-14, Display of Hotline Poster(s), is the following:

Office of the Inspector General
Fraud Detection Office
Attn: Poster Request
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C.20530

PART 2804 - ADMINISTRATIVE MATTERS

Subpart 2804.4 - Safeguarding Classified Information Within Industry

Sec.

2804.402 General.

2804.402-70 Contractor personnel security program.

Subpart 2804.9 - Taxpayer Identification Number Information

2804.901 Definitions.

2804.903 Reporting contract information to the IRS.

2804.903-70 Reporting contract information.

2804.903-71 Special reporting exceptions.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2804 - ADMINISTRATIVE MATTERS

Subpart 2804.4 - Safeguarding Classified Information Within Industry

2804.402 General.

Classified acquisitions or contracts, which require access to classified material, as defined in FAR 4.402, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations. Contractors at all tiers are required to comply with all such policies, procedures, and instructions.

2804.402-70 Contractor personnel security program.

It is DOJ policy that all acquisitions which allow unescorted contractor access to Government facilities or sensitive information contain, as appropriate, requirements for appropriate personnel security screening by the contractor. To the maximum extent practicable, contractors shall be made responsible for the performance of personnel security screening. The personnel security screening may vary from one acquisition to another, depending upon the type, context, duration and location of the work to be performed. Classified contracts are exempted from the requirements of this section because they are governed by the requirements of Executive Order 12829 (January 6, 1993).

Subpart 2804.9 - Taxpayer Identification Number Information

2804.901 Definitions.

Classified contract, as used in this subpart, means a contract whose existence or subject matter has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring protection against unauthorized disclosure for reasons of national security.

Confidential contract, as used in this subpart, means a contract, the reporting of which to the Internal Revenue Service (IRS) as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

2804.903 Reporting contract information to the IRS.

2804.903-70 Reporting contract information.

(a) Pursuant to FAR 4.903, the HCA or designee shall certify to the SPE, in the format specified in this section, that such official has examined the information submitted by that bureau as its Federal

Procurement Data System (FPDS) data, that the data has been prepared pursuant to the requirements of 26 U.S.C. 6050M, and that, to the best of such official's knowledge and belief, it is compiled from bureau records maintained in the normal course of business for the purpose of making a true, correct, and complete return as required by 26 U.S.C. 6050M.

(b) The following certification will be signed and dated by the HCA or designee and submitted with each bureau's annual FPDS report.

CERTIFICATION

I, _____ (Name), _____ (Title) have examined the information to be submitted by _____ (Bureau) to the DOJ Senior Procurement Executive, for making information returns on behalf of the Department of Justice to the Internal Revenue Service, and certify that this information has been prepared pursuant to the requirements of 26 U.S.C. 6050M and that, to the best of my knowledge and belief, it is a compilation of bureau records maintained in the normal course of business for the purpose of providing true, correct, and complete returns as required by 26 U.S.C. 6050M.

Signature _____ Date _____

(c) The SPE will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC), and authorize the FPDC to make returns to the IRS on behalf of the agency.

2804.903-71 Special reporting exceptions.

(a) The Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, amended, 26 U.S.C. 6050M, to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to

26 U.S.C. 6050M by the Technical and Miscellaneous Revenue Act of 1988 apply to these types of contracts.

Subchapter B - Competition and Acquisition Planning

PART 2805 - PUBLICIZING CONTRACT ACTIONS

Subpart 2805.2 - Synopses of Proposed Contract Actions

Sec.

2805.202 Exceptions.

Subpart 2805.4 - Release of Information

2805.403 Requests from Members of Congress.

2805.404 Release of long-range acquisition estimates.

2805.404-1 Release procedures.

Subpart 2805.5 - Paid Advertisements

2805.500 Scope.

2805.502 Authority.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2805 - PUBLICIZING CONTRACT ACTIONS

Subpart 2805.2 - Synopses of Proposed Contract Actions

2805.202 Exceptions.

The HCA or designee is the agency head for the purposes of the determination required by FAR 5.202 (b).

Subpart 2805.4 - Release of Information

2805.403 Requests from Members of Congress.

The SPE is the agency head for the purposes of FAR 5.403.

2805.404 Release of long-range acquisition estimates.

2805.404-1 Release procedures.

The SPE is the agency head for the purposes of FAR 5.404-1(a) and (b).

Subpart 2805.5 - Paid Advertisements

2805.500 Scope.

This subpart provides policies and procedures for the procurement of paid advertising as covered by 44 U.S.C. 3702, 3703 and 5 U.S.C. 302 (b).

2805.502 Authority.

(a) The HCA or designee is the agency head for approving the publication of paid advertisements in newspapers under FAR 5.502(a).

(b) Authority to place advertisements in media other than newspapers must be granted in writing in advance by the HCA, or designee. No advertisement, notice, or proposal should be published prior to receipt of advance written approval for such publication by the HCA or designee, and no voucher or invoice for any such advertisement or publication will be paid unless there is presented, with the voucher or invoice, a copy of the written approval. Approval shall not be granted retroactively.

PART 2806 - COMPETITION REQUIREMENTS

Subpart 2806.2 - Full and Open Competition After Exclusion of Sources

Sec.

2806.202 Establishing or maintaining alternative sources.

Subpart 2806.3 - Other Than Full and Open Competition

2806.304 Approval of the justification.

Subpart 2806.5 - Advocates for Competition

2806.501 Requirement.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2806 - COMPETITION REQUIREMENTS

Subpart 2806.2 - Full and Open Competition After Exclusion of Sources

2806.202 Establishing or maintaining alternative sources.

The HCA or designee is the agency head for the purposes of FAR 6.202.

Subpart 2806.3 - Other Than Full and Open Competition

2806.304 Approval of the justification.

(a) Justifications for contract actions over the contracting officer's approval dollar threshold shall be submitted to the BPC for concurrence before being forwarded to the bureau Competition Advocate for approval.

(b) Justifications requiring approval by the HCA, or a designee, shall be submitted to the {i} BPC and {ii} bureau Competition Advocate for concurrence before being forwarded to the HCA or designee.

(c) Justifications requiring approval by the SPE shall be submitted to the {i} BPC, {ii} the bureau Competition Advocate, and {iii} the HCA for concurrence before being forwarded to the SPE for approval.

(d) A class justification shall be approved in accordance with established bureau procedures and FAR 6.304(c).

Subpart 2806.5 - Advocates for Competition

2806.501 Requirement.

(a) The Director, Office of Acquisition Management (OAM), Justice Management Division (JMD), is designated as the DOJ Competition Advocate.

(b) The HCA or designee for each bureau will appoint an official to be the bureau Competition Advocate. The bureau Competition Advocate shall be vested with the overall responsibility for competition activities within his or her bureau. The delegated bureau Competition Advocate must be at or above the level of the BPC organizationally.

PART 2807 - ACQUISITION PLANNING

Subpart 2807.1 - Acquisition Plans

Sec.

2807.103 Agency-head responsibilities.

2807.104 General procedures.

2807.104-70 Bundled requirements.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2807 - ACQUISITION PLANNING

Subpart 2807.1 - Acquisition Plans

2807.103 Agency-head responsibilities.

(a) The HCA is the agency head's designee for the purposes of FAR 7.103.

(b) The CAO may establish acquisition planning criteria and dollar approval thresholds for those bureaus that:

(1) Fail to allow ample time for conducting competitive acquisitions.

(2) Develop a pattern of awarding urgent requirements that generally restrict competition.

(3) Fail to identify identical or like requirements that, where appropriate, can be combined under one solicitation, and thereby miss opportunities to obtain lower costs through volume purchasing, reduced administrative costs in processing one contract action versus multiple actions, and standardizing goods and services.

2807.104 General procedures.

2807.104-70 Bundled requirements.

In the case of bundled requirements, as defined in FAR 7.104(d)(2) and 7.107, the contracting officer shall consult with the bureau Small Business Technical Advisor (SBTA). After receiving concurrence from the bureau SBTA, the contracting officer will provide a copy of the proposed acquisition package to the Small Business Administration (SBA) Procurement Center Representative (PCR) and a copy to the DOJ Director, Office of Small Disadvantaged Business Unit (OSDBU), at least 30 days prior to the solicitation issuance. The SBA PCR is required to make any alternative recommendations to the contracting officer within 15 days after receipt of the package. If the SBA does not respond in this timeframe, the contracting officer may proceed as planned with the procurement.

PART 2808 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2808.4 - Federal Supply Schedules

Sec.

2808.405 Ordering procedures for Federal Supply Schedules.

2808.405-3 Blanket purchase agreements (BPAs).

Subpart 2808.6 - Acquisition from Federal Prison Industries, Inc.

2808.605 Exceptions.

2808.605-70 Clearances.

Subpart 2808.8 - Acquisition of Printing and Related Supplies

2808.802 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2808 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2808.4 - Federal Supply Schedules

2808.405 Ordering procedures for Federal Supply Schedules.

2808.405-3 Blanket purchase agreements (BPAs).

The SPE is the agency head for purposes of FAR 8.405-3(a)(3)(ii).

Subpart 2808.6 - Acquisition from Federal Prison Industries, Inc.

2808.605 Exceptions.

2808.605-70 Clearances.

Include the Federal Prison Industries (FPI) clearance numbers in solicitations and award documents.

Subpart 2808.8 - Acquisition of Printing and Related Supplies

2808.802 Policy.

The Director, Facilities and Administrative Services Staff (FASS), JMD, has been designated to serve as the central printing authority for the DOJ, for purposes of FAR 8.802(b).

PART 2809 - CONTRACTOR QUALIFICATIONS

Subpart 2809.2 - Qualifications Requirements

Sec.

2809.202 Policy.

Subpart 2809.4 - Debarment, Suspension, and Ineligibility

2809.402 Policy.

2809.404 Exclusions in the System for Award Management.

2809.405 Effect of listing.

2809.405-1 Continuation of current contracts.

2809.405-2 Restrictions on subcontracting.

Subpart 2809.5 - Organizational and Consultant Conflicts of Interest

2809.503 Waiver.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2809 - CONTRACTOR QUALIFICATIONS

Subpart 2809.2 - Qualifications Requirements

2809.202 Policy.

The HCA or designee is the agency head for the purposes of FAR 9.202(a)(1).

Subpart 2809.4 - Debarment, Suspension, and Ineligibility

2809.402 Policy.

(a) The SPE is the agency head for purposes of suspension and debarment under FAR subpart 9.4, and serves as the Suspension and Debarment Official (SDO) for both procurement and non-procurement matters.

(b) Contracting activities shall consider recommending suspension or debarment of a contractor when cause is shown as listed under FAR 9.406-2 and 9.407-2.

(1) If a determination is made that available facts do not justify debarment or suspension, the file should be documented accordingly and no additional action is required.

(2) If the decision is made to recommend suspension or debarment of a contractor, in coordination with the activity's BPC and legal counsel, the bureau shall submit a memorandum to the SDO containing all relevant facts and analysis on which the recommendation is based. The submission also should include copies of all relevant documents.

2809.404 Exclusions in the System for Award Management exclusions.

(a) The SDO shall ensure the discharge of all agency responsibilities prescribed in FAR 9.404(c)(1) through (6), (8), and (9).

(b) The authority to establish procedures prescribed in FAR 9.404(c)(7) is delegated to the HCA, or designee.

2809.405 Effect of listing.

The HCA or designee is the agency head for the purposes of FAR 9.405.

2809.405-1 Continuation of current contracts.

The HCA or designee is the agency head for the purposes of FAR 9.405-1.

2809.405-2 Restrictions on subcontracting.

The HCA or designee is the agency head for the purposes of FAR 9.405-2.

Subpart 2809.5 - Organizational and Consultant Conflicts of Interest

2809.503 Waiver.

The HCA is the agency head for the purpose of waiving any general rule or procedure prescribed in FAR subpart 9.5. As prescribed in FAR 9.503, the authority delegated to the HCA to waive any general rule or procedure prescribed in FAR subpart 9.5 may not be delegated below the level of the HCA.

PART 2810 - MARKET RESEARCH

Sec.

2810.002 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2810 - MARKET RESEARCH

2810.002 Procedures.

(a) Market research must be conducted in accordance with DOJ sustainability policies and procedures in order to determine whether there are any sustainable acquisition standards applicable to the desired product or service.

(b) Ensure the statement of work includes sustainability requirements in accordance with JAR 2823.103, when applicable.

PART 2811 - DESCRIBING AGENCY NEEDS

Sec.

2811.002 Policy.

Subpart 2811.1 - Selecting and Developing Requirements Documents

2811.103 Market acceptance.

Subpart 2811.5 - Liquidated Damages

2811.501 Policy.

Subpart 2811.6 - Priorities and Allocations

2811.603 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2811 - DESCRIBING AGENCY NEEDS

2811.002 Policy.

(a) Consistent with the policy expressed in FAR 11.002(b), the metric system is the preferred system of weights and measures and shall be used in DOJ solicitations and contracts.

(b) When acquiring products or services, the requirements of FAR 11.002(d)(1) and DOJ sustainability policies and procedures are to be followed.

Subpart 2811.1 - Selecting and Developing Requirements Documents

2811.103 Market acceptance.

The HCA is the agency head for the purposes of FAR 11.103(a).

Subpart 2811.5 - Liquidated Damages

2811.501 Policy.

The HCA or designee is the agency head for the purposes of FAR 11.501(d).

Subpart 2811.6 - Priorities and Allocations

2811.603 Procedures.

The HCA or designee is the agency head for the purposes of FAR 11.603.

PART 2812 - ACQUISITION OF COMMERCIAL ITEMS

Subpart 2812.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

2812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2812 - ACQUISITION OF COMMERCIAL ITEMS

Subpart 2812.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

2812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

Contracting Officers shall include the provisions and clauses at JAR 2852.212-4 in all solicitations and contracts for the acquisition of commercial items that require FAR 52.212-4, Contract Terms and Conditions – Commercial Items.

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The HCA, or designee at a level at or above the BPC, is authorized to approve the contracting officer's request for waiver for an individual contract action submitted under FAR 12.302(c). The SPE is authorized to approve the contracting officer's request for waiver for a class of contracts submitted under FAR 12.302(c).

Subchapter C - Contracting Methods and Contract Types

PART 2813 - SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2813.2 - Actions at or Below the Micro-Purchase Threshold

Sec.

2813.201 General.

Subpart 2813.3 - Simplified Acquisition Methods

2813.305 Imprest funds and third party drafts.

2813.307 Forms.

Subpart 2813.4 - Fast Payment Procedure

2813.401 General.

Subpart 2813.70 - Certified Invoice Procedure

2813.70-1 Policy.

2813.70-2 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

PART 2813 - SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2813.2 - Actions at or Below the Micro-Purchase Threshold

2813.201 General.

The SPE is the agency head for the purposes of FAR 13.201(g)(1).

Subpart 2813.3 - Simplified Acquisition Methods

2813.305 Imprest funds and third party drafts.

The HCA or designee is the agency head for the purposes of FAR 13.305-3(a).

2813.307 Forms.

Bureaus may use order forms other than the Standard Forms (SF) and Optional Forms (OF) identified in FAR 13.307. They may also include on those forms clauses suitable for the specific purchase, including tailored clauses, provided that proper procedures and all relevant limitations, documentation instructions, and required maintenance are followed.

Subpart 2813.4 - Fast Payment Procedure

2813.401 General.

DOJ contracting activities are authorized to use the fast payment procedures prescribed in FAR 13.4 solely for utility service payments.

Subpart 2813.70 - Certified Invoice Procedure

2813.70-1 Policy.

Supplies or services may be acquired on the open market from local suppliers at the site of the work or usage point. Using the vendor's invoice, instead of issuing a Government purchase order, is authorized under the certified invoice procedure. Certified invoice procedures may not be used to place orders under established contracts.

2813.70-2 Procedures.

(a) The certified invoice procedure for purchases may be used only under FAR part 13 and this part, subject to the following:

- (1) The individual transaction amount does not exceed the micro-purchase threshold;
- (2) Availability of sufficient funds is verified;
- (3) A purchase order is not required by either the supplier or the Government;
- (4) The vendor submits approved and appropriate invoices; and,
- (5) The items purchased are domestic source end products, except as provided in FAR subpart 25.1.

(b) Using the certified invoice procedures does not eliminate the requirements in FAR part 13 that apply to purchases at or below the micro-purchase threshold.

(c) The chief of the contracting office, as defined in JAR 2802.101, may delegate the authority to use the certified invoice procedure. Each delegation must specify any limitations placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services being procured.

(d) Individuals using this purchasing technique shall require the supplier to immediately submit properly prepared invoices that itemize property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is valid and correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to the appropriate administrative office.

(e) The administrative office must approve the invoice and, if approved, forward it to the Finance Office for payment. Before forwarding the invoice to the Finance Office, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and /or services were received on _____(date) and accepted on _____(date). Oral purchase was authorized and no confirming order has been issued.

Signature_____

Date_____

Printed name or Typed Name and Title

PART 2814 - SEALED BIDDING

Subpart 2814.4 - Opening of Bids and Award of Contract

Sec.

2814.404 Rejection of bids.

2814.404-1 Cancellation of invitations after opening.

2814.407 Mistakes in bids.

2814.407-3 Other mistakes disclosed before award.

2814.407-4 Mistakes after awards.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2814 - SEALED BIDDING

Subpart 2814.4 - Opening of Bids and Award of Contract

2814.404 Rejection of bids.

2814.404-1 Cancellation of invitations after opening.

The HCA or designee is the agency head for the purposes of FAR 14.404-1(c), (e)(1), and (f).

2814.407 Mistakes in bids.

2814.407-3 Other mistakes disclosed before award.

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR 14.407-3 is delegated to the HCA, or designee at a level at or above the chief of the contracting office. The HCA or designee shall seek the advice of legal counsel before making any determinations.

(b) The following procedures shall be followed when submitting cases of mistakes in bids to the Comptroller General for an advance decision.

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by the HCA, or designee.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, D. C. 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and,

(iii) Copies of all pertinent records and supporting documentation.

2814.407-4 Mistakes after award.

The authority to make determinations under FAR 14.407-4 is delegated to the HCA. The HCA may re-delegate this authority at a level at or above the chief of the contracting office. The determination must be coordinated with the contracting activity's legal counsel.

PART 2815 - CONTRACTING BY NEGOTIATION

Subpart 2815.2 - Solicitation and Receipt of Proposals and Information

Sec.

2815.204 Contract format.

Subpart 2815.3 - Source Selection

2815.303 Responsibilities.

Subpart 2815.4 - Contract Pricing

2815.404 Proposal analysis.

2815.404-2 Data to support proposal analysis.

Subpart 2815.6 - Unsolicited Proposals

2815.604 Agency points of contact.

2815.605 Content of unsolicited proposals.

2815.606 Agency procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

PART 2815 - CONTRACTING BY NEGOTIATION

Subpart 2815.2 - Solicitation and Receipt of Proposals and Information

2815.204 Contract format.

The HCA or designee is the agency head for the purposes of FAR 15.204(e).

Subpart 2815.3 - Source Selection

2815.303 Responsibilities.

The HCA or designee is the agency head for the purposes of FAR 15.303(a).

Subpart 2815.4 - Contract Pricing

2815.404 Proposal analysis.

2815.404-2 Data to support proposal analysis.

All requests for field pricing support shall be made by the contracting officer directly to the cognizant audit agency. In accordance with Attorney General Order 1931-94, a copy of the request for such services shall be sent to the OIG at the time it is mailed to the cognizant audit agency. A copy of each report received shall also be sent to the OIG. Requests for other audit assistance may be made to the Assistant Inspector General for Audits.

Subpart 2815.6 - Unsolicited Proposals

2815.604 Agency points of contact.

Each contracting activity shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the BPC or immediate subordinate.

2815.605 Content of unsolicited proposals.

To ensure against contracts between DOJ and prospective offers that would exceed the limits of advance guidance set forth in FAR 15.604 and potentially result in an unfair advantage to an offeror, the offeror of an unsolicited proposal must include the following warranty in any unsolicited proposal. Contracting officers receiving an unsolicited proposal without this warranty shall not process the proposal until the offeror is notified and given an opportunity to submit a proper warranty. If no warranty is provided in a reasonable time, the contracting officer shall reject the unsolicited proposal and notify the offeror of the rejection and the reason therefore. The warranty must be signed by a responsible management official of the proposing organization authorized to contractually obligate the organization.

UNSOLICITED PROPOSAL

WARRANTY BY OFFEROR

This is to warrant that –

- (a) This proposal has not been prepared under Government supervision;
- (b) The methods and approaches stated in the proposal were developed by this offeror;
- (c) Any contact with DOJ personnel has been with the limits of appropriate advance guidance set forth in FAR 15.604; and,
- (d) No prior commitments were received from DOJ personnel regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

2815.606 Agency procedures.

The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, safeguarding, and final disposition of unsolicited proposals in accordance with FAR subpart 15.6.

PART 2816 - TYPES OF CONTRACTS

Subpart 2816.2 - Fixed-Price Contracts

Sec.

2816.207 Firm-fixed-price, level-of-effort term contracts.

2816.207-3 Limitations.

Subpart 2816.5 - Indefinite-Delivery Contracts

2816.505 Ordering.

Subpart 2816.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-materials contracts.

2816.602 Labor-hour contracts.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

PART 2816 - TYPES OF CONTRACTS

Subpart 2816.2 - Fixed-Price Contracts

2816.207 Firm-fixed-price, level-of-effort term contracts.

2816.207-3 Limitations.

The BPC or designee is the chief of the contracting office for the purposes of FAR 16.207-3(d).

Subpart 2816.5 - Indefinite-Delivery Contracts

2816.505 Ordering.

(a) Justifications for exceptions to the fair opportunity process specified in FAR 16.505(b)(2) shall be approved in accordance with JAR 2806.304.

(b) In accordance with FAR 16.505(b)(8), the DOJ task order and delivery order ombudsman is the DOJ Competition Advocate.

(c) HCAs shall designate a bureau task order and delivery order ombudsman. This person may be the bureau Competition Advocate.

(d) Bureau ombudsmen shall review and resolve complaints from contractors concerning task or delivery orders placed by the bureau.

(e) Contractors not satisfied with the resolution of a complaint by a bureau ombudsman may request the DOJ ombudsman to review the complaint.

Subpart 2816.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-materials contracts.

The BPC, or designee at a level at or above the chief of the contracting office, is the agency official authorized to approve a determination and finding prescribed in FAR 16.601(d)(1)(ii).

2816.602 Labor-hour contracts.

The limitations set forth in 2816.601 for time-and-materials contracts also applies to labor hour contracts.

PART 2817 - SPECIAL CONTRACTING METHODS

Subpart 2817.1 - Multiyear Contracting

Sec.

2817.104 General.

Subpart 2817.2 - Options

2817.204 Contracts.

Subpart 2817.6 - Management and Operating Contracts

2817.602 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

PART 2817 - SPECIAL CONTRACTING METHODS

Subpart 2817.1 - Multiyear Contracting

2817.104 General.

The SPE is the agency head for the purposes of FAR 17.104(b).

Subpart 2817.2 - Options

2817.204 Contracts.

Deviation requests to exceed the 5-year limitations specified in FAR 17.204(e) require advance approval from –

(a) The HCA or designee for individual contracts; and

(b) The SPE for classes of contracts.

Subpart 2817.6 - Management and Operating Contracts

2817.602 Policy.

The HCA or designee is the agency head for the purposes of FAR 17.602(a).

Subchapter D - Socioeconomic Programs

PART 2819 - SMALL BUSINESS PROGRAMS

Subpart 2819.5 - Small Business Total Set-Asides, Partial Set-Asides, and Reserves

Sec.

2819.505 Limitations on subcontracting and nonmanufacturer rule.

Subpart 2819.8 - Contracting with the Small Business Administration (the 8(a) Program)

2819.810 SBA appeals.

2819.812 Contract administration.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2819 - SMALL BUSINESS PROGRAMS

Subpart 2819.5 - Small Business Total Set-Asides, Partial Set-Asides, and Reserves

2819.505 Limitations on subcontracting and nonmanufacturer rule.

The SPE is the agency head for the purposes of FAR 19.505.

Subpart 2819.8 - Contracting with the Small Business Administration (the 8(A) Program)

2819.810 SBA appeals.

The SPE is the agency head for the purposes of FAR 19.810(c).

2819.812 Contract administration.

The HCA or designee is the agency head for the purposes of FAR 19.812(d).

PART 2822 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2822.1 - Basic Labor Policies

Sec.

2822.101 Labor relations.

2822.101-70 Domestic violence, sexual assault, and stalking.

2822.103 Overtime.

2822.103-4 Approvals.

Subpart 2822.3 - Contract Work Hours and Safety Standards Act

2822.302 Liquidated damages and overtime pay.

Subpart 2822.4 - Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.

2822.406-8 Investigations.

2822.406-12 Cooperation with the Department of Labor.

Subpart 2822.6 - Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000

2822.604 Exemptions.

2822.604-2 Regulatory exemptions.

Subpart 2822.8 - Equal Employment Opportunity

2822.803 Responsibilities.

2822.807 Exemptions.

2822.807-70 Cooperation in equal employment opportunity investigations.

Subpart 2822.13 - Equal Opportunity for Veterans

2822.1305 Waivers.

2822.1310 Solicitation provisions and contract clauses.

Subpart 2822.14 - Employment of Workers with Disabilities

2822.1403 Waivers.

2822.1408 Contract clause.

Subpart 2822.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child

Labor

2822.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2822 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2822.1 - Basic Labor Policies

2822.101 Labor relations.

2822.101-70 Domestic violence, sexual assault, and stalking.

Contracting officers shall insert the clause at JAR 2852.222-70, Domestic Violence, Sexual Assault, and Stalking, in every written solicitation when services will be performed in whole or in part on DOJ premises.

2822.103 Overtime.

2822.103-4 Approvals.

During contract performance, contractor requests for overtime exceeding the amount authorized in paragraph (a) of the clause at FAR 52.222-2, Payment for Overtime Premiums, must be approved at a level above the contracting officer. Such approval should be reflected by the signature of the approving official on the contracting officer's written determination made in accordance with FAR 22.103-4.

Subpart 2822.3 - Contract Work Hours and Safety Standards Act

2822.302 Liquidated damages and overtime pay.

The authority to make the determination prescribed in FAR 22.302(c) is delegated to the HCA, or designee.

Subpart 2822.4 - Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.

2822.406-8 Investigations.

The contracting officer shall prepare and forward reports of violations under FAR 22.406-8(d)(1) to the HCA or designee at a level at or above the BPC. That official shall be responsible for processing the report in accordance with FAR 22.406-8(d)(2).

2822.406-12 Cooperation with the Department of Labor.

Any information furnished to the Department of Labor, as required by FAR 22.406-12(a), shall be submitted through the HCA, or designee.

Subpart 2822.6 - Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000

2822.604 Exemptions.

2822.604-2 Regulatory exemptions.

The SPE is the agency head for the purposes of FAR 22.604-2(b)(1).

Subpart 2822.8 - Equal Employment Opportunity

2822.803 Responsibilities.

The SPE is the agency head for the purposes of FAR 22.803(c).

2822.807 Exemptions.

The SPE is the agency head for the purposes of FAR 22.807(a)(1).

2822.807-70 Cooperation in equal employment opportunity investigations.

The contracting officer shall insert the clause at 52.222-70, Contractor Cooperation in Equal Employment Opportunity Investigations, in solicitations, contracts, and orders that include the clause at FAR 52.222-26, Equal Opportunity.

Subpart 2822.13 - Equal Opportunity for Veterans

2822.1305 Waivers.

All requests for waiver of the terms of FAR 52.222-35 pursuant to FAR 22.1310(a)(1)(ii) or (a)(2) shall be forwarded from the HCA or designee to Office of Acquisition Management (OAM), JMD, for review and approval by the Attorney General (AG).

2822.1310 Solicitation provisions and contract clauses.

The SPE is the agency head for the purposes of FAR 22.1310(a)(1)(ii) and (a)(2).

Subpart 2822.14 - Employment of Workers with Disabilities

2822.1403 Waivers.

The SPE is the agency head for the purposes of FAR 22.1403(b).

2822.1408 Contract clause.

The SPE is the agency head for the purposes of FAR 22.1408(a)(2).

Subpart 2822.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

2822.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

The contracting officer shall refer to the DOJ Inspector General for investigation, under FAR 22.1503(e), any matters relating to that section.

PART 2823 - ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 2823.2 - Energy and Water Efficiency and Renewable Energy

Sec.

2823.204 Procurement exemptions.

Subpart 2823.3 - Hazardous Material Identification and Material Safety Data

2823.303 Contract clause.

2823.303-70 Unsafe conditions due to hazardous material.

Subpart 2823.4 - Use of Recovered Materials and Biobased Products

2823.404 Agency affirmative procurement programs.

2823.404-70 Affirmative procurement program for recycled materials.

2823.405 Procedures.

Subpart 2823.7 - Contracting for Environmentally Preferable Products and Services

2823.704 Electronic products environmental assessment tool.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2823 - ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 2823.2 - Energy and Water Efficiency and Renewable Energy

2823.204 Procurement exemptions.

The HCA or designee is the agency head for the purposes of executing the written determination not to purchase ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products.

Subpart 2823.3 - Hazardous Material Identification and Material Safety Data

2823.303 Contract clause.

2823.303-70 Unsafe conditions due to hazardous material.

FAR clause 52.223-3 shall be included in solicitations and contracts that will require delivery of hazardous material as defined in FAR 23.301. In addition, the contracting officer shall insert the clause at JAR 2852.223-70, Unsafe Conditions Due to the Presence of Hazardous Material, in all such solicitations and contracts, where the contract will require the performance of services on Government-owned or Government-leased facilities.

Subpart 2823.4 - Use of Recovered Materials and Biobased Products

2823.404 Agency affirmative procurement programs.

2823.404-70 Affirmative procurement program for recycled materials.

(a) *Recovered materials preference program.* Preference will be given to procuring and using products containing recovered materials rather than products made with virgin materials when adequate competition exists, and when price, performance, and availability are equal.

(b) *Promotion program.* The Department of Justice Environmental Executive (DOJEE) has primary responsibility for actively promoting the acquisition of products containing recycled materials throughout DOJ. Technical and procurement personnel will cooperate with the DOJEE to actively promote DOJ's Affirmative Procurement Program.

(c) *Procedures for vendor estimation, verification, and certification--(1) Estimation.* The contractor shall provide estimates of the total percentage(s) of recovered materials for EPA designated items used in products or services provided.

(2) *Certification.* Contracting officers shall provide copies of all vendor and subcontractor certifications required by FAR 23.404 to the DOJEE.

(3) *Verification.* The DOJEE is responsible for periodically reviewing vendor certification documents and waivers as part of the annual review and monitoring process to determine if DOJ is in compliance with EOs 13101, 13693, and any subsequent amendments.

2823.405 Procedures.

The contracting officer is the approving official for justifications made pursuant to FAR 23.405(b)(2).

Subpart 2823.7 - Contracting for Environmentally Preferable Products and Services

2823.704 Electronic products environmental assessment tool.

The HCA or designee is the agency head for the purposes of executing the written determination not to purchase EPEAT®-registered products.

PART 2825 - FOREIGN ACQUISITION

Subpart 2825.1 - Buy American - Supplies

Sec.

2825.103 Exceptions.

2825.105 Determining reasonableness of cost.

Subpart 2825.2 - Buy American - Construction Materials

2825.202 Exceptions.

2825.204 Evaluating offers of foreign construction material.

2825.206 Noncompliance.

Subpart 2825.10 - Additional Foreign Acquisition Regulations

2825.1001 Waiver of right to examination of records.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2825 - FOREIGN ACQUISITION

Subpart 2825.1 - Buy American - Supplies

2825.103 Exceptions.

The authority to make the determination prescribed in FAR 25.103(a) is delegated to the HCA, or designee.

2825.105 Determining reasonableness of cost.

The authority to make the determinations prescribed in FAR 25.105(a)(1) is delegated to the HCA, or designee.

Subpart 2825.2 - Buy American - Construction Materials

2825.202 Exceptions.

The authority to make the determinations prescribed in FAR 25.202(a)(1) is delegated to the HCA, or designee.

2825.204 Evaluating offers of foreign construction material.

The HCA, or designee at a level at or above the BPC, is the agency official authorized to make the determination in accordance with FAR 25.204(b) that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable.

2825.206 Noncompliance.

Potentially fraudulent noncompliance under FAR 25.206(c)(4) shall be referred to the OIG for investigation.

Subpart 2825.10 - Additional Foreign Acquisition Regulations

2825.1001 Waiver of right to examination of records.

The HCA, or designee at a level at or above the BPC, is the agency official authorized to make determinations under FAR 25.1001(a)(2)(iii).

Subchapter E - General Contracting Requirements

PART 2827 - PATENTS, DATA, AND COPYRIGHTS

Subpart 2827.3 - Patent Rights Under Government Contracts

Sec.

2827.303 Contract clauses.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2827 - PATENTS, DATA, AND COPYRIGHTS

Subpart 2827.3 - Patent Rights Under Government Contracts

2827.303 Contract clauses.

The SPE is the agency head for the purposes of FAR 27.303(e)(4).

PART 2828 - BONDS AND INSURANCE

Subpart 2828.1 - Bonds and Other Financial Protections

Sec.

2828.101 Bid guarantees.

2828.101-1 Policy on use.

2828.106 Administration.

2828.106-6 Furnishing information.

Subpart 2828.2 - Sureties and Other Security for Bonds

2828.203 Acceptability of individual sureties.

2828.203-7 Exclusion of individual sureties.

Subpart 2828.3 - Insurance

2828.307 Insurance under cost-reimbursements contracts.

2828.307-1 Group insurance plans.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2828 - BONDS AND INSURANCE

Subpart 2828.1 - Bonds and Other Financial Protections

2828.101 Bid guarantees.

2828.101-1 Policy on use.

The HCA or designee is the agency head for the purposes of authorizing class waivers in accordance with FAR 28.101-1(c).

2828.106 Administration.

2828.106-6 Furnishing information.

In accordance with FAR 28.106-6(c), the HCA, or designee at a level at or above the BPC, is the agency official authorized to furnish the certified copy of the bond and the contract.

Subpart 2828.2 - Sureties and Other Security for Bonds

2828.203 Acceptability of individual sureties.

All assets pledged by individual sureties must be eligible obligations as defined in 31 CFR part 225, "Acceptable Collateral for Pledging to Federal Agencies." This collateral will be placed in the custody of the U.S. Treasury, with a Federal Reserve Bank acting as the depository until the completion of the obligation.

2828.203-7 Exclusion of individual sureties.

The SDO is the agency head for the purposes of FAR 28.203-7(a).

Subpart 2828.3 - Insurance

2828.307 Insurance under cost-reimbursements contracts.

2828.307-1 Group insurance plans.

Under cost-reimbursement contracts, the contractor, before buying insurance under a group insurance plan, shall submit the plan to the contracting officer for review and approval. During review, the contracting officer may utilize all sources of information available such as audit, industry practices, etc., to determine if acceptance of the group insurance plan is in the Government's best interest.

PART 2829 - TAXES

Subpart 2829.3 - State and Local Taxes

Sec.

2829.302 Application of State and local taxes to the Government.

2829.303 Application of State and local taxes to Government contractors and subcontractors.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2829 - TAXES

Subpart 2829.3 - State and Local Taxes

2829.302 Application of State and local taxes to the Government.

Generally, purchases and leases made by the Federal Government are immune from State and local taxation.

2829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents of the Government for the purpose of avoiding State and local taxes.

(b) A DOJ contracting activity may request to the CAO, through the HCA, that a contractor be considered an agent of the Government for the purpose of claiming immunity from State and local sales and use taxes. The CAO will review such requests to ensure compliance with DOJ policy and applicable law. Each case forwarded will be reviewed by the HCA or designee for approval before referral to the CAO.

PART 2830 - COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 2830.2 - CAS Program Requirements

Sec.

2830.201 Contract requirements.

2830.201-5 Waiver.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2830 - COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 2830.2 - CAS Program Requirements

2830.201 Contract requirements.

2830.201-5 Waiver.

The SPE is the agency head for the purposes of FAR 30.201-5. Pursuant to FAR 30.201-5, this authority may not be delegated to any official in the agency below the senior contract policymaking level.

PART 2831 - CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2831.1 - Applicability

Sec.

2831.101 Objectives.

2831.109 Advance agreements.

Subpart 2831.2 - Contracts with Commercial Organizations

2831.205 Selected costs.

2831.205-6 Compensation for personal services.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2831 - CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2831.1 - Applicability

2831.101 Objectives.

(a) The SPE is the official authorized to grant individual deviations from the cost principles of FAR part 31.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the SPE prior to submission to the Civilian Agency Acquisition Council (CAAC).

2831.109 Advance agreements.

(a) DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated in accordance with FAR 31.109, prior to the contractor incurring such costs.

(b) All determinations required by this subpart shall be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination shall be placed in the contract file.

(c) Advance agreements will be signed by both the contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office, when applicable.

Subpart 2831.2 - Contracts with Commercial Organizations

2831.205 Selected costs.

2831.205-6 Compensation for personal services.

The HCA or designee is the agency head for the purposes FAR 31.205-6(g)(6).

PART 2832 - CONTRACT FINANCING

Sec.

2832.006 Reduction or suspension of contract payments upon finding of fraud.

2832.006-1 General.

2832.006-2 Definition.

2832.006-3 Responsibilities.

2832.006-4 Procedures.

Subpart 2832.1 - Non-Commercial Item Purchase Financing

2832.114 Unusual contract financing.

Subpart 2832.2 - Commercial Item Purchase Financing

2832.201 Statutory authority.

Subpart 2832.4 - Advance Payments for Non-Commercial Items

2832.402 General.

2832.407 Interest.

Subpart 2832.5 - Progress Payments Based on Costs

2832.502 Preaward matters.

2832.502-2 Contract finance office clearance.

2832.503 Postaward matters.

2832.503-6 Suspension or reduction of payments.

Subpart 2832.7 - Contract Funding

2832.703 Contract funding requirements.

2832.703-3 Contracts crossing fiscal years.

Subpart 2832.9 - Prompt Payment

2832.903 Responsibilities.

Subpart 2832.11 - Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2832 - CONTRACT FINANCING

2832.006 Reduction or suspension of contract payments upon finding of fraud.

2832.006-1 General.

The SPE is the agency head for the purposes of FAR 32.006-1.

2832.006-2 Definition.

The SPE is the “remedy coordination official” for the purposes of FAR 32.006-2.

2832.006-3 Responsibilities.

DOJ personnel shall immediately report, in writing, to the contracting officer and the OIG any apparent or suspected contractor request for advance, partial, or progress payments based on fraud.

2832.006-4 Procedures.

The SPE is the agency head for the purposes of FAR 32.006-4.

Subpart 2832.1 - Non-Commercial Item Purchase Financing

2832.114 Unusual contract financing.

The HCA, or designee at a level at or above the BPC, is the official authorized to approve unusual contract financing as set forth in FAR 32.114.

Subpart 2832.2 - Commercial Item Purchase Financing

2832.201 Statutory authority.

The HCA or designee is the agency head for the purposes of FAR 32.201.

Subpart 2832.4 - Advance Payments for Non-Commercial Items

2832.402 General.

(a) The authority to make the determinations prescribed in FAR 32.402 and sign written determinations and findings with respect to making advance payments is vested in the HCA or designee.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments shall be approved at a level above the contracting officer.

(c) In ensuring that all FAR and agency requirements are met, the contracting officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate.

2832.407 Interest.

In accordance with FAR 32.407(d), advance payments may be made on an interest free basis. A determination to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with JAR 2832.402.

Subpart 2832.5 - Progress Payments Based on Costs

2832.502 Preaward matters.

2832.502-2 Contract finance office clearance.

Before taking any of the actions prescribed in FAR 32.502-2, the contracting officer shall obtain advice and assistance from the bureau's Chief Financial Officer.

2832.503 Postaward matters.

2832.503-6 Suspension or reduction of payments.

The HCA or designee is the approving official for any action recommended under FAR 32.503-6. Upon approval, the contracting officer shall request the finance office to suspend or reduce payments.

Subpart 2832.7 - Contract Funding

2832.703 Contract funding requirements.

2832.703-3 Contracts crossing fiscal years.

The HCA or designee is the agency head for the purposes of FAR 32.703-3(b).

Subpart 2832.9 - Prompt Payment

2832.903 Responsibilities.

The HCA or designee is responsible for promulgating policies and procedures to implement FAR 32.9.

Subpart 2832.11 - Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

When the clause at FAR 52.232-34, Payment by Electronic Funds Transfer (EFT) - Other than System for Award Management, is required, the contracting officer may insert in paragraph (b)(1) of the clause a particular time after award, such as a fixed number of days, or an event such as the submission of the first request for payment, to establish the point at which contractors' EFT information shall be provided.

PART 2833 - PROTESTS, DISPUTES, AND APPEALS

Subpart 2833.1 - Protests

Sec.

2833.101 Definitions.

2833.102 General.

2833.103 Protests to the agency.

Subpart 2833.2 - Disputes and Appeals

2833.203 Applicability.

2833.209 Suspected fraudulent claims.

2833.211 Contracting officer's decision.

2833.214 Alternative dispute resolution (ADR).

2833.214-70 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2833 - PROTESTS, DISPUTES, AND APPEALS

Subpart 2833.1 - Protests

2833.101 Definitions.

(a) *Agency Protest Official* (APO) means the Deciding Official for a procurement protest filed with a contracting activity of DOJ when the contracting officer will not be the Deciding Official because of the protestor's election under JAR 22833.103(b). The HCA will designate the individual who will serve as the APO for a given protest subject to the following:

(1) The APO will be at an organizational level above that of the contracting officer, will be knowledgeable about the acquisition process in general, and will not have had any previous personal involvement or programmatic interest in the procurement that is the subject of the protest.

(2) The departmental or bureau Competition Advocate may serve as the APO.

(b) *Deciding Official* means the official who will review and decide a procurement protest filed with the agency. The Deciding Official will be the contracting officer unless the protestor requests pursuant to JAR 2833.103(b) that the protest be decided by an individual above the level of the contracting officer, in which case the HCA will designate an APO to serve as the Deciding Official.

(c) *Interested party* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

2833.102 General.

(a) This part prescribes policies and procedures for processing protests to DOJ in accordance with FAR 33.103 and Executive Order 12979, Agency Procurement Protests, dated October 25, 1995.

(b) Contracting officers and contractors are encouraged to use their best efforts to resolve concerns outside of the protest process through frank and open discussion as required by FAR 33.103(b) or through alternative dispute resolution techniques where appropriate.

(c) Responsibilities are as follows:

(1) *Contracting officers.* (i) Include the provision at JAR 2852.233-70 in all solicitations that are expected to exceed the simplified acquisition threshold.

(ii) When serving as the Deciding Official, decide the protest using the procedures in this subpart and FAR 33.103(d)(2).

(iii) If the protestor requests that the protest be decided at a level above the contracting officer, the contracting officer shall ensure that the Agency Protest Official, once designated, receives a copy of the protest and any other materials the protestor has provided to the contracting officer in support of the protest.

(2) *Agency Protest Official.* The APO shall use the procedures in this subpart and FAR 33.103 to provide an independent review of and decision on the issues raised in the protest.

2833.103 Protests to the agency.

(a) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest is received at the location the solicitation designates for serving protests.

(b) Only interested parties may file a protest.

(c) An interested party filing an agency protest has the choice of requesting either that the contracting officer or an individual above the level of the contracting officer decide the protest.

(d) In addition to the information required by FAR 33.103(d)(2), the protest shall:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the contracting officer or other official designated to receive protests.

(3) State whether the protestor chooses to have the contracting officer or an individual above the level of the contracting officer decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the Deciding Official.

(e) Upon receipt of a protest by the agency, the contracting officer, even when not serving as the Deciding Official, will notify other vendors competing in the procurement of the protest, any stay of award or suspension of performance, and/or any determination under FAR 33.103(f)(1) or (3) if and when made.

(f) Intervenors to the protest are not permitted.

(g) The decision by the Agency Protest Official is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest and a decision by the Agency Protest Official is final and not appealable.

(h) The protestor has only one opportunity to support or explain the substance of its protest. DOJ procedures do not provide for any discovery. The Deciding Official has discretion to request additional information from the agency or the protestor.

(i) A protestor may represent itself or be represented by legal counsel. DOJ will not reimburse the protester for any legal fees or costs related to the agency protest.

(j) If an agency protest is received before contract award, the contracting officer shall not make award unless the HCA or designee makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award or within 5 days after a debriefing date has been offered to the protester under a timely debriefing request under FAR 15.505 or 15.506, whichever is later, the contracting officer shall suspend contract performance unless the HCA or designee makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the agency protest is decided, dismissed, or withdrawn.

(k) The Deciding Official's decision may be oral or written. If oral, the Deciding Official shall send a confirming letter after the decision using a means that allows proof of receipt, including electronic mail. The letter shall:

- (1) State whether the protest was denied, sustained, or dismissed;
 - (2) Indicate the date the decision was provided; and
 - (3) Provide the rationale for the decision.
- (l) If the Deciding Official sustains the protest, relief may consist of any of the following:
- (1) Termination of the contract for convenience or cause.
 - (2) Recompeting the requirement.
 - (3) Amending the solicitation.
 - (4) Refraining from exercising contract options.

(5) Reevaluating the offers or bids and making a new award determination.

(6) Other action that the Deciding Official determines is appropriate.

(m) Proceedings on an agency protest shall be dismissed if a protest on the same or similar basis is filed with a protest forum outside of DOJ.

Subpart 2833.2 - Disputes and Appeals

2833.203 Applicability.

The SPE is the agency head for the purposes of FAR 33.203(b).

2833.209 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the OIG for investigation.

2833.211 Contracting officer's decision.

The Civilian Board of Contract Appeals (CBCA) hears and decides contract disputes originating from DOJ.

2833.214 Alternative dispute resolution (ADR).

2833.214-70 Policy.

It is DOJ's goal to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Therefore, contracting officers will consider all possible means of reaching a negotiated settlement consistent with the Government's best interest, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

Subchapter F - Special Categories of Contracting

PART 2834 - MAJOR SYSTEM ACQUISITION

Subpart 2834.0 - General

Sec.

2834.002 Policy.

2834.003 Responsibilities.

2834.005 General requirements.

2834.005-6 Full production.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2834 - MAJOR SYSTEM ACQUISITION

Subpart 2834.0 - General

2834.002 Policy.

The Small Business and Federal Procurement Competition Enhancement Act of 1984 allows an executive agency to establish a dollar threshold for the designation of a major system, in accordance with Pub. L. 98-577. Dollar thresholds for a major system under Office of Management and Budget (OMB) Circular A-109 are designated in this section.

(a) *Major automated information system.* Within DOJ, a major automated information system is one whose life-cycle cost is in excess of \$100 million.

(b) *Major real property system.* (1) By purchase, when the assessed value of the property exceeds \$60 million.

(2) By lease, when the annual rental charges, including basic services (e.g., cleaning, guards, maintenance), exceed \$1.8 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds \$12 million.

(c) *Research and development (R&D) system.* Any R&D activity expected to exceed \$500,000 for the R&D phase is subject to OMB Circular A-109, unless exempted by the HCA or designee under paragraph (e) of this section.

(d) *Any other system or activity.* The HCA or designee responsible for the system may designate any system or activity as a Major System under OMB Circular A-109, e.g., selected systems designed to support more than one principal organizational unit.

(e) *Exemption.* The CAO, upon recommendation by the HCA or designee responsible for the system, may determine that, because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB

Circular A-109 process, even where by virtue of the life cycle costs it would otherwise be identified as “major” in response to OMB Circular A-109.

2834.003 Responsibilities.

(a) The SPE is the agency head for the purposes of FAR 34.003(a).

(b) The CAO is the agency head for the purposes of FAR 34.003(c).

2834.005 General requirements.

2834.005-6 Full production.

The CAO is the agency head for the purposes of FAR 34.005-6.

PART 2836 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2836.2 - Special Aspects of Contracting for Construction

Sec.

2836.204 Disclosure of the magnitude of construction projects.

Subpart 2836.6 - Architect-Engineer Services

2836.602 Selection of firms for architect-engineer contracts.

2836.602-1 Selection criteria.

2836.602-4 Selection authority.

2836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2836 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2836.2 - Special Aspects of Contracting for Construction

2836.204 Disclosure in solicitations of the magnitude of construction projects.

For construction projects over \$10,000,000, present the magnitude in ranges as follows:

(a) Between \$10,000,001 and \$25,000,000;

(b) Between \$25,000,001 and \$100,000,000;

(c) Between \$100,000,001 and \$250,000,000;

(d) Between \$250,000,001 and \$500,000,000; and

(e) Over \$500,000,000.

Subpart 2836.6 - Architect-Engineer Services

2836.602 Selection of firms for architect-engineer contracts.

2836.602-1 Selection criteria.

The HCA or designee is the agency head for purposes of FAR 36.602-1(b).

2836.602-4 Selection authority.

The HCA or designee is the agency head for purposes of FAR 36.602-4(a).

2836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(a) The short selection process, described in FAR 36.602-5, is authorized for use in DOJ contracts not expected to exceed the simplified acquisition threshold.

(b) The HCA or designee is the agency head for purposes of FAR 36.602-5(b)(2).

PART 2837 - SERVICE CONTRACTING

Subpart 2837.1 - Service Contracts - General

Sec.

2837.106 Funding and term of service contracts.

Subpart 2837.2 - Advisory and Assistance Services

2837.204 Guidelines for determining availability of personnel.

Subpart 2837.5 - Management Oversight of Service Contracts

2837.503 Agency-head responsibilities.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2837 - SERVICE CONTRACTING

Subpart 2837.1 - Service Contracts - General

2837.106 Funding and term of service contracts.

The HCA or designee is the agency head for purposes of FAR 37.106(b).

Subpart 2837.2 - Advisory and Assistance Services

2837.204 Guidelines for determining availability of personnel.

The HCA or designee is the agency head for purposes of FAR 37.204.

Subpart 2837.5 - Management Oversight of Service Contracts

2837.503 Agency-head responsibilities.

The HCA or designee or designee is the agency head for purposes of FAR 37.503.

PART 2839 - ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 2839.1 - General

Sec.

2839.101 Policy.

2839.102 Management of risk.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2839 - ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 2839.1 - General

2839.101 Policy.

DOJ's Chief Information Officer (CIO) and SPE are responsible for issuing policies and procedures to manage the agency information technology (IT) acquisition process.

2839.102 Management of risk.

Contracts involving DOJ Information and Information Systems shall comply with the security requirements prescribed in FAR 39.102 and all applicable DOJ security requirements, including without limitation all DOJ Policy Statements and DOJ Policy Instructions established under the DOJ Acquisition Management Order relating to the Management of Risk of DOJ Information and Information Systems.

PART 2841 - ACQUISITION OF UTILITY SERVICES

Subpart 2841.2 - Acquiring Utility Services

Sec.

2841.201 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2841 - ACQUISITION OF UTILITY SERVICES

Subpart 2841.2 - Acquiring Utility Services

2841.201 Policy.

The HCA or designee is the agency head for the purposes of FAR 41.201(d)(2)(i) and (d)(3).

Subchapter G – Contract Management

PART 2842 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2842.6 - Corporate Administrative Contracting Officer

Sec.

2842.602 Assignment and location.

Subpart 2842.7 - Indirect Cost Rates

2842.703 General.

2842.703-2 Certificate of indirect costs.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2842 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2842.6 - Corporate Administrative Contracting Officer

2842.602 Assignment and location.

The HCA or designee is the agency head for the purposes of FAR 42.602(a).

Subpart 2842.7 - Indirect Cost Rates

2842.703 General.

2842.703-2 Certificate of indirect costs.

The HCA or designee is the agency head for the purposes of FAR 42.703-2(b).

PART 2845 - GOVERNMENT PROPERTY

Subpart 2845.1 - General

Sec.

2845.105 Contractors' property management system compliance.

2845.105-70 Contractor reporting of Government-furnished property.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2845 - GOVERNMENT PROPERTY

Subpart 2845.1 - General

2845.105 Contractors' property management system compliance.

The contractor's records for Government-furnished property may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

2845.105-70 Contractor reporting of Government-furnished property.

(a) In compliance with FAR 45.105, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the DOJ property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit to the Facilities and Administrative Services Staff (FASS), JMD, a summary report of agency property furnished under each contract as of the end of the calendar year. The report shall include a listing of Government-furnished property for all contracts for which the bureau maintains the official Government records.

PART 2846 - QUALITY ASSURANCE

Subpart 2846.6 - Material Inspection and Receiving Reports

Sec.

2846.601 General.

Subpart 2846.7 - Warranties

2846.704 Authority for use of warranties.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2846 - QUALITY ASSURANCE

Subpart 2846.6 - Material Inspection and Receiving Reports

2846.601 General.

Bureaus shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection (FAR 46.401) and acceptance (FAR 46.501).

Subpart 2846.7 - Warranties

2846.704 Authority for use of warranties.

The use of a warranty in an acquisition shall be approved at a level above the contracting officer.

PART 2848 - VALUE ENGINEERING

Subpart 2848.1- Policies and Procedures

Sec.

2848.102 Policies.

Subpart 2848.2 - Contract Clauses

2848.201 Clauses for supply or service contracts.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2848 - VALUE ENGINEERING

Subpart 2848.1- Policies and Procedures

2848.102 Policies.

The HCA is the agency head for purposes of FAR 48.102(a).

Subpart 2848.2 - Contract Clauses

2848.201 Clauses for supply or service contracts.

The HCA or designee is the agency head for purposes of FAR 48.201(a)(6).

PART 2849 - TERMINATION OF CONTRACTS

Subpart 2849.1 - General Principles

Sec.

2849.106 Fraud or other criminal conduct.

2849.111 Review of proposed settlements.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2849 - TERMINATION OF CONTRACTS

Subpart 2849.1 - General Principles

2849.106 Fraud or other criminal conduct.

If the contracting officer has reason to suspect fraud or other criminal conduct related to the settlement negotiations of a terminated contract, the contracting officer shall discontinue the negotiations and report the facts supporting the suspicion through the HCA or designee to the OIG.

2849.111 Review of proposed settlements.

The HCA or designee may establish procedures for the review and approval of settlement agreements at a level above the contracting officer. In addition, all proposed termination settlements shall be reviewed by legal counsel.

PART 2850 - EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 2850.1 - Extraordinary Contractual Actions

Sec.

2850.100 Definition.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2850 - EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 2850.1 - Extraordinary Contractual Actions

2850.100 Definition.

Approving authority as used in this part means the Attorney General.

Subchapter H - Clauses and Forms

PART 2852 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

2852.000 Scope of part.

Subpart 2852.1 - Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

Subpart 2852.2 - Text of Provisions and Clauses

2852.200 Scope of subpart.

2852.201-70 Contracting Officer's Representative (COR).

2852.203-70 General Non-Disclosure Agreement.

2852.203-71 Intelligence Related Non-Disclosure Agreement.

2852.212-4 Contract Terms and Conditions – Commercial Items (FAR Deviation).

2852.222-70 Domestic Violence, Sexual Assault, and Stalking.

2852.223-70 Unsafe Conditions Due to the Presence of Hazardous Material.

2852.233-70 Protests Filed Directly with the Department of Justice.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2852 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2852.000 Scope of part.

This part provides the text of provisions and clauses which are unique to DOJ or supplement the FAR.

Subpart 2852.1 - Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

JAR provisions and clauses in this part may be incorporated in solicitations and contracts by reference.

Subpart 2852.2 - Text of Provisions and Clauses

2852.200 Scope of subpart.

This subpart sets forth the text of all DOJ provisions and clauses. It also cross-references to the location in the JAR that prescribes the use of each provision and clause.

2852.201-70 Contracting Officer's Representative (COR).

As prescribed in JAR 2801.604, insert the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (NOV 2020)

(a) Mr. /Ms. (Name) of (Organization), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Representative (COR) under (contract #), for the period of (specify the performance period of the contract that the designation covers).

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or another representative designated in writing by the Contracting Officer. The term "technical direction" includes, without limitation, the following:

(i) Receiving all deliverables;

(ii) Inspecting and accepting the supplies or services provided in accordance with the terms and conditions of this contract;

(iii) Clarifying, directing, or redirecting the contract effort, including shifting work between work areas and locations, filling in details, or otherwise serving to accomplish the contractual statement of work to ensure the work is accomplished satisfactorily;

(iv) Evaluating performance of the Contractor; and

(v) Certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COR does not have the authority to issue direction that:

(i) Constitutes a change of assignment or work outside the contract specification/work statement/scope of work.

(ii) Constitutes a change as defined in the clause entitled "Changes" or other similar contract term.

(iii) Causes, in any manner, an increase or decrease in the contract price or the time required for contract performance;

(iv) Causes, in any manner, any change in a term, condition, or specification or the work statement/scope of work of the contract;

(v) Causes, in any manner, any change or commitment that affects price, quality, quantity, delivery, or other term or condition of the contract or that, in any way, directs the contractor or its subcontractors to operate in conflict with the contract terms and conditions;

(vi) Interferes with the contractor's right to perform under the terms and conditions of the contract;

(vii) Directs, supervises, or otherwise controls the actions of the Contractor's employees or a Subcontractor's employees.

(d) The Contractor shall proceed promptly with performance resulting from the technical direction of the COR. If, in the opinion of the Contractor, any direction by the COR or the designated representative falls outside the authority of (b) above and/or within the limitations of (c) above, the Contractor shall immediately notify the Contracting Officer.

(e) Failure of the Contractor and Contracting Officer to agree that technical direction is within the scope of the contract is a dispute that shall be subject to the "Disputes" clause and/or other similar contract term.

(f) COR authority is not re-delegable.

(End of Clause)

2852.203-70 General Non-Disclosure Agreement.

As prescribed in JAR 2803.908-70, insert the following provision:

GENERAL NON-DISCLOSURE AGREEMENT (AUG 2016)

The provisions of this Non-Disclosure Agreement (NDA) are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements,

obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.

(End of Provision)

2852.203-71 Intelligence Related Non-Disclosure Agreement.

As prescribed in JAR 2803.908-71, insert the following provision:

INTELLIGENCE RELATED NON-DISCLOSURE AGREEMENT (AUG 2016)

(1) The signatory will not disclose any classified information received in the course of such intelligence or intelligence-related activity unless specifically authorized to do so by the United States Government; and

(2) The Non-Disclosure Agreement (NDA) does not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, which are essential to reporting a substantial violation of law.

(End of Provision)

2852.212-4 Contract Terms and Conditions, Commercial Items (FAR Deviation).

As prescribed in JAR 2812.301, insert the following provision:

TERMS AND CONDITIONS – COMMERCIAL ITEMS (NOV 2020)

When a commercial item is contemplated (using FAR Part 12 procedures or otherwise) and the contract will include FAR 52.212-4, the following replaces subparagraph (g)(2); paragraph (h); subparagraph (i)(2); paragraph (s); and paragraph (u), Unauthorized Obligations, of the basic FAR clause, and adds paragraph (w), as follows:

(g)(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment act regulations at 5 CFR part 1315, as modified by subparagraph (i)(2), *Prompt payment*, of this clause.

* * *

(h) *Patent indemnity*. Contractor shall indemnify and hold harmless the Government and its respective affiliates, officers, directors, employees, agents, successors and assigns (collectively,

“Indemnities”) from and against any and all liability and losses incurred by the Indemnities that are (i) included in any settlement and/or (ii) awarded by a court of competent jurisdiction arising from or in connection with any third party claim of infringement made against Indemnities asserting that any product or service supplied under this contract constitutes infringement of any patent, copyright, trademark, service mark, trade name or other proprietary or intellectual right. This indemnity shall not apply unless Contractor shall have been informed within a reasonable time by the Government of the claim or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. This indemnity also shall not apply to any claim unreasonably settled by the Government which obligates Contractor to make any admission or pay any amount without written consent signed by an authorized officer of Contractor, unless required by final decree of a court of competent jurisdiction.

* * *

(i)(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations (5 CFR Part 1315), with the following modification regarding the due date: For the sole purpose of computing an interest penalty due the Contractor, the Government agrees to inspect and determine the acceptability of any supply delivered or service performed specified in the invoice within thirty (30) days of receipt of a proper invoice from the Contractor, after which time, if no affirmative action has been taken by the Government to accept such supply or service, the supply or service will be deemed accepted and payment due thirty (30) days from the date of deemed acceptance. If the Government makes the determination that the item delivered or service performed is deficient or otherwise unacceptable, or the invoice is otherwise determined not to be a proper invoice, the terms and conditions of this paragraph regarding prompt payment will apply to the date the Contractor corrects the deficiency in the item delivered or service performed or submits a proper invoice. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive

acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts provisions of the basic FAR clause at 52.212-4, and the Unauthorized Obligations and Contractor's Commercial Supplier Agreements – Unenforceable Clauses provisions of JAR 2852.212-4.

(3) FAR 52.212-5.

(4) Other paragraphs of the basic FAR clause at 52.212-4, with the exception of paragraph (o), Warranty, and those paragraphs identified in this deviation of 52.212-4.

(5) Addenda to this solicitation, contract, or order, including contractor's Commercial supplier agreements incorporated into the contract.

(6) Solicitation provisions if this is a solicitation.

(7) Paragraph (o), Warranty, of the basic FAR clause at 52.212-4.

(8) The Standard Form 1449.

(9) Other documents, exhibits, and attachments.

(10) The specification.

* * *

(u) *Unauthorized obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract or order is subject to any Commercial supplier agreement that includes any language, provision, or clause requiring the Government to indemnify the Contractor or any person or entity for

damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (see 31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an “I agree” click box or other similar mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement and have no effect.

(2) Paragraph (u) (1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

* * *

(w) *Commercial supplier agreements – unenforceable clauses.* When any supply or service acquired under this contract or order is subject to a contractor’s commercial supplier agreement, the following shall be deemed incorporated into such agreement and modifies and replaces any similar language, provision, or clause in such agreement. As used herein, “this agreement” means any contractor commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind the Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language, provision, or clause purporting to subject the U.S. Government to the laws of any U.S. state, territory, district, or municipality, or the laws of a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted and shall have no effect.

(B) Any language, provision, or clause requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted and shall have no effect.

(C) Any language, provision, or clause prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted and shall have no effect.

(iv) *Continued performance.* Notwithstanding any other provision in this agreement, if the Contractor believes the Government to be in breach of this contract, order, or agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d), Disputes, of FAR 52.212-4.

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to the contract, order, or this agreement, (A) binding arbitration shall not be used unless otherwise specifically authorized by agency guidance, and (B) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the Government only when explicitly provided by statute.

(vi) *Updating terms.*

(A) After award, the contractor may unilaterally revise terms if they are not material. Material terms are defined as:

(1) Terms that change Government rights or obligations;

- (2) Terms that increase Government prices;
- (3) Terms that decrease the overall level of service; or
- (4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provisions of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *Order of precedence.* Any Order of Precedence clause in any commercial supplier agreement is not enforceable against the Government. The applicable Order of Precedence for this contract, order, or agreement is FAR 52.212-4(s), as revised by JAR 2812.302 and 2852.212-4(s).

(viii) *No automatic renewals.* If any license or service tied to period payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by a properly warranted contracting officer, and any provision or term of any license or service purporting to provide for automatic renewal is unenforceable against the Government.

(ix) *Indemnification by the Government or end-user.* Any language, provision, or clause of this commercial supplier agreement requiring the Government or End-user to indemnify the commercial supplier or licensor is not enforceable against the Government.

(x) *Indemnification by the commercial supplier or licensor.* Any clause of this agreement requiring or permitting the commercial supplier or licensor to defend the Government as a condition of indemnifying the Government for any claim of infringement is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. §516.

(xi) *Audits.* Any language, provision, or clause of this commercial supplier agreement permitting Contractor to audit the end user's compliance with this agreement is not enforceable against the

Government. To the extent any language, provision or clause of this agreement permits Contractor to audit the Government's compliance under this contract, order, or agreement, such language, provision, or clause of this agreement is hereby stricken and replaced as follows:

“(A) If Contractor reasonably believes that the Government has violated the terms of this agreement with regard to the restrictions on authorized use and/or the number of authorized users, upon written request from Contractor, including an explanation of the basis for the request, DOJ will provide a redacted version of the Government's most recent Security Assessment and Authorization package (SAA) to Contractor on a confidential basis, so that Contractor may reasonably verify the Government's compliance with its obligations under this agreement. Contractor understands and agrees that the Government will remove or redact any information from the SAA that it reasonably believes may compromise (a) the security of the Government's information technology environment; (b) the confidentiality of any third-party proprietary or confidential information; (c) any confidential, sensitive law enforcement information; and (d) any other information that the Government believes may compromise a past, current, or prospective investigation, prosecution, or litigation. Notwithstanding the preceding, and subject to the Government's policies and procedures for such review, including but not limited to complying with all Government security requirements prior to being granted access to the Government's facilities, including the execution of appropriate confidentiality and/or non-disclosure agreements, the Government will arrange, upon Contractor's written request, for Contractor to view an un-redacted version of the SAA on Government premises. Contractor understands that Contractor will be provided a copy of the un-redacted SAA on Government premises only and that no un-redacted copy of the SAA, or any medium containing information relating to it, will be permitted to be removed from Government premises.

(B) The Contractor also understands and agrees that the Contractor shall make a request under this paragraph no more than on an annual basis and only during the period of the contract, and that any activities performed by Contractor under this clause will be performed at Contractor's expense, without reimbursement by the Government.

(C) Discrepancies found with regard to the restrictions on authorized use and/or the number of authorized users may result in a charge by Contractor to the Government. Any resulting invoice must comply with the proper invoicing and payment requirements specified in the contract. This charge, if disputed by the Government, will be resolved through the Disputes clause at 52.212-4(d); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.”

(xii) *Taxes or surcharges.* Any taxes or surcharges which the Contractor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xiii) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government’s prior approval, except as expressly permitted under FAR 52.212-4 (b), Assignment.

(xiv) *Confidential information.*

(A) During the term of this contract or order, either party may identify information as “confidential information,” and there shall be no disclosure, dissemination, or publication of any such information except to the extent required for the performance of this contract or order and otherwise provided in this clause or by statute or regulation. Specifically, the parties agree that the party receiving confidential information may only disclose such information to its employees and contractors on a “need-to-know” basis to carry out the obligations of this contract or order, and that subcontractors performing under this Agreement are subject to the same stipulations provided in this provision. The parties also agree that this provision shall survive the termination of this contract or order, and any confidential information obtained or received which comes within these restrictions shall remain confidential, provided that the obligation to treat information as confidential shall not apply to information which is or becomes publicly available through no improper action of the receiving party; is or comes to be in the receiving party’s possession independent of its relationship with the disclosing party; is developed by or becomes known to the receiving party without use of any confidential

information of the disclosing party; or is obtained rightfully from a third party not bound by an obligation of confidentiality. Additionally, nothing in this contract or order shall restrict disclosure by the receiving party pursuant to any applicable law, including but not limited to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, or an order of any court of competent jurisdiction, provided that in either such case the receiving party gives prompt notice to the disclosing party to allow the disclosing party to interpose an objection to such disclosure, take action to assure confidential handling of the confidential information, or take such other action as it deems appropriate to protect its confidential information.

(B) The Government considers and hereby identifies as confidential any and all information related to any inquiries and/or searches performed by the Government or by contractor at the Government's direction under this contract or order, including the subject of any such inquiry or search and any and all search terms, regardless of whether provided in writing or orally to Contractor, and Contractor agrees that it may only disclose such information to its employees and contractors on a "need-to-know" basis to carry out the obligations of this contract or order and that it will not share, reveal, divulge, disclose, disseminate, or publicize any such information to any third party except as provided in this provision without the prior written approval of the Contracting Officer. Contractor also understands and agrees that any subcontractors performing under this contract or order are subject to the same stipulations and that Contractor may be held responsible for any violations of confidentiality by a subcontractor.

(C) These provisions are consistent with and do not supersede, conflict with, or otherwise alter an employee's obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by

Executive orders and statutory provisions relating to whistleblower protection are incorporated into this contract and are controlling.

(D) The Government may share the terms, conditions and prices set forth in this Order with, and provide a copy of the Order to, other Executive branch agencies of the U.S. Government, provided that the Government shall ensure that other Executive branch agencies to which it provides such information will be required to treat all such information consistent with terms and conditions set forth in this Order.

(E) Notwithstanding anything in this agreement, the Government may retain any confidential information as required by law, regulation, or its internal document retention procedures for legal, regulatory, or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this Order.

(xv) *Authorized users.* Authorized users may include full and part-time employees of the Government, including those working at or from remote locations, and contractors and contractor employees working within the scope of their contract with the Government, including those at or from remote locations.

(xvi) *Authorized use.* Authorized users are authorized to use the product or service acquired under this contract in performing business on behalf of the Government. Any information obtained or acquired by the Government under this contract may be used by the Government in the performance of Government business.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

2852.222-70 Domestic Violence, Sexual Assault, and Stalking.

As prescribed in JAR 2822.101-70, insert the following clause:

DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING (DEC 2014)

(a) It is DOJ policy to enhance workplace awareness of and safety for victims of domestic violence, sexual assault, and stalking. This policy is summarized in “*DOJ Policy Statement 1200.02*,

Federal Workforce Responses to Domestic Violence, Sexual Assault, and Stalking,” available in full for public viewing at:

<https://www.justice.gov/sites/default/files/ovw/legacy/2013/12/19/federal-workplace-responses-to-domesticviolence-sexualassault-stalking.pdf>.

Vendor agrees, upon contract award, to provide notice of this Policy Statement, including at a minimum the above-listed URL, to all Vendor employees and employees of subcontractors who will be assigned to work on DOJ premises.

(b) Upon contract award, DOJ will provide the Contractor with the name and contact information of the point of contact for victims of domestic violence, sexual assault, and stalking for the component or components where the Contractor will be performing. The Contractor agrees to inform its employees and employees of subcontractors, who will be assigned to work on DOJ premises, with the name and contact information of the point of contact for victims of domestic violence, sexual assault, and stalking.
(End of Clause)

2852.223-70 Unsafe Conditions Due to the Presence of Hazardous Material.

As prescribed in JAR 2823.303-70, insert the following clause:

UNSAFE CONDITIONS DUE TO THE PRESENCE OF HAZARDOUS MATERIAL (NOV 2020)

(a) “Unsafe condition” as used in this clause means the actual or potential exposure of Contractor or Government employees to a hazardous material.

(b) “Hazardous Material” as used in this clause includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract), any other potentially hazardous material requiring safety controls, or any other material or working condition designated as hazardous by the Contracting Officer’s Representative (COR).

(c) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Contractors to apprise its employees of all hazards to which they

may be exposed in the course of their employment; proper conditions and precautions for safe use and exposure; and related symptoms and emergency treatment in the event of exposure.

(d) Prior to commencement of work, Contractors are required to inspect for and report to the Contracting Officer the presence of, or suspected presence of, any unsafe condition including asbestos or other hazardous materials or working conditions in areas in which they will be working.

(e) If during the performance of the work under this contract, the Contractor or any of its employees, or subcontractor employees, discovers the existence of an unsafe condition, the Contractor shall immediately notify the Contracting Officer, or designee (with written notice provided not later than three (3) working days thereafter), of the existence of an unsafe condition. Such notice shall include the Contractor's recommendations for the protection and the safety of Government, Contractor and subcontractor personnel and property that may be exposed to the unsafe condition.

(f) When the Government receives notice of an unsafe condition from the Contractor, the parties will agree on a course of action to mitigate the effects of that condition and, if necessary, the contract will be amended. Failure to agree on a course of action will constitute a dispute under the Disputes clause of this contract.

(g) Nothing contained in this clause shall relieve the Contractor or subcontractors from complying with applicable Federal, State, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material including but not limited to the use, disturbance, or disposal of such material.

(End of Clause)

2852.233-70 Protests Filed Directly with the Department of Justice.

As prescribed in JAR 2833.102(d), insert a clause substantially as follows:

PROTESTS FILED DIRECTLY WITH THE DEPARTMENT OF JUSTICE (NOV 2020)

(a) The following definitions apply in this provision:

(1) “Agency Protest Official” (APO) means the Deciding Official for a procurement protest filed with a contracting activity of DOJ when the contracting officer will not be the Deciding Official because of the protestor’s election under JAR 2833.103(b)

(2) “Deciding Official” means the official who will review and decide a procurement protest filed with the agency. The Deciding Official will be the contracting officer unless the protestor requests pursuant to JAR 2833.103(b) that the protest be decided by an individual above the level of the contracting officer, in which case the HCA will designate an APO to serve as the Deciding Official.

(3) “Interested Party” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) Only interested parties may file a protest.

(c) An interested party filing a protest with the DOJ has the choice of requesting either that the Contracting Officer or the APO decide the protest.

(d) A protest filed directly with the DOJ shall:

(1) Indicate that it is a protest to DOJ.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(d)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protestor is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(e) The decision by the APO is an alternative to a decision by the Contracting Officer. The APO will not consider appeals from the Contracting Officer's decision on an agency protest and a decision by the APO is final and not appealable.

(f) The Deciding Official may conduct a scheduling conference. The scheduling conference, if conducted, will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(g) Oral conferences may take place either by telephone or in person.

(h) The protestor has only one opportunity to support or explain the substance of its protest. DOJ procedures do not provide for any discovery. The deciding official may request additional information from the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(i) A protestor may represent itself or be represented by legal counsel. The DOJ will not reimburse the protestor for any legal fees related to the agency protest.

(j) The DOJ will stay award or suspend contract performance in accordance with FAR 33.103(f), unless the contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. The justification or determination shall be approved at a level above the Contracting Officer. The stay or suspension, unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official will make a best effort to issue a decision on the protest within thirty-five (35) days after the filing date. The decision shall be written, and provided to the protestor using a method that provides for evidence of receipt.

(l) The DOJ may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a forum outside DOJ.

(End of Clause)

Dated: September 30, 2021.

Lee Lofthus,
Assistant Attorney General for Administration.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix -- Sections of the JAR That Are Being Proposed for Removal And/Or Renaming

Current JAR Provision	Disposition
2801.2 Administration	Not Replaced. New 2801.1 Purpose, Authority, Issuance.
2801.270-1 Revisions	Not Replaced.
2801.470 Requests for Class Deviations	Now 2801.404.
2801.602 Contracting Officer	Not Replaced.
2801.602-3 Ratification of Unauthorized Commitments	Not Replaced.
2801.603 Selection, Appointment and Termination of Appointment	Not Replaced.
2801.603-1 Department of Justice Acquisition Career Management Program	Not Replaced.
2801.603-3 Appointment	Not Replaced. [Addressed Contracting Officer's Representative (COR) appointment below Micro Threshold.]
2801.70 Contracting Officer's Technical Representative (COTR)	New 2801.604 addresses COR.
2801.7001-701 General	New 2801.604 addresses COR.
2801.7001-702 Selection, Appointment and Limitation of Authority	New 2801.604 addresses COR.
2803.104-10 Violations or Possible Violations	Now 2803.104-7.
2803.104-70 Ethics Program Training Requirements	Not Replaced.
2804.403 Responsibilities of Contracting Officers	Not Replaced.
2804.470 - Contractor Personnel Security Program	Now 2804.402-70 - Contractor Personal Security Program.
2804.470-1 Policy	See 2804.402-70.
2804.470-2 Responsibilities	See 2804.402-70.
2804.5 Electronic Commerce in Contracting	Not Replaced.
2804.506 Exemptions	Not Replaced.
2804.6 Contract Reporting	Now 2804.903-70.
2804.602 Federal Procurement Data System	Now 2804.903-70.
2804.8 Government Contract Files	Not Replaced.
2804.805 Storage, Handling, and Contract Files	Not Replaced.
2804.902 Contract Information	Now addressed in 2804.903-70.
2804.970 Special Reporting Exceptions	Now addressed in 2804.903-71.
2805.201-70 Departmental Notification	Not Replaced.
2805.3 Synopses of Contract Awards	Now 2805.2 Synopsis of Proposed Contract Actions.
2805.302-70 Departmental Notification	Not Replaced.
2805.503-70 Procedures	Not Replaced.
2806.302 Circumstances Permitting Other Than Full and Open Competition	Now addressed in 2806.3.
2806.302-7 Public Interest	Not Replaced.
2806.302-70 Determinations and Findings	Now addressed in 2806.304 Approval of the Justification.
2806.303 Justifications	See above.
2806.303-1 Requirements	See above.
2806.303-2 Content	See above.
2806.502 Duties and Responsibilities	Now 2806.5 Advocates for Competition.
2807.102 Policy	Now 2807.1 addresses Acquisition Planning.
2807.102-70 Applicability	Now 2807.1 addresses Acquisition Planning.

2807.103-70 Other Officials' Responsibilities	Now 2807.1 addresses Acquisition Planning.
2807.105 Contents of Written Acquisition Plans.	Now 2807.1 addresses Acquisition Planning.
2807.5 Inherently Governmental Functions	Not Replaced.
2807.503 Policy	Not Replaced.
2809.404 List of Parties Excluded From Federal Procurement and Nonprocurement Programs	Not Replaced.
2811.001 Definitions	[Not replaced, but 2811.001 Still “Describing Agency’s Needs”].
2811.104-70 Brand-Name or Equal Description	Not Replaced.
2813.7001 Policy	Now 2813.70-1. [2813.70-1 addresses Simplified Acquisitions].
2813.7002 Procedures	Now in 2813.70-2.
2814.409 Information to Bidders	Not Replaced.
2814.409-2 Award of Classified Contracts	Not Replaced.
2815.205 Issuing Solicitations	Not Replaced.
2815.404-2 Information to Support Proposal Analysis	Renamed “Data to Support Proposal Analysis”.
2815.207 Handling Proposals and Information	Not Replaced.
2815.404-4 Profit	Not Replaced.
2815.407-4 Should-Cost Review	Not Replaced.
2816.6 Time-And-Materials, Labor-Hour, and Letter Contracts	Not Replaced.
2816.601 Time-And-Material Contracts	Not Replaced.
2816.603-2 Application	Not Replaced.
2816.603-3 Limitations	Not Replaced.
2817.108 Congressional Notification	Not Replaced. [But Multi-Year Contracting now at part 2817].
2817.605 Award, Renewal and Extension	Not Replaced. [Multi-Year Contracting now at part 2817].
2819.506 Withdrawing or Modifying Set-Asides	Not Replaced.
2819.6 Certificates of Competency and Determinations of Eligibility	Not Replaced.
2819.602 Procedures	Not Replaced.
2819.602-1 Referral	Not Replaced.
2819.70 Forecasts of Expected Contract Opportunities	Not Replaced.
2819.7001 General	Not Replaced.
2819.7002 Procedures	Not Replaced.
2822.13 SERVICE DISABLED AND VIETNAM ERA VETERANS	Renamed Equal Opp. For Veterans.
2822.303 Waivers	Not Replaced.
2823 ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE	Renamed ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE.
2823.1 Pollution Control and Clean Air and Water	Not Replaced.
2823.107 Compliance Responsibilities	Not Replaced.
2823.303-70 Departmental Contract Clause	Renamed Unsafe Conditions Due to Hazardous Material.
2823.4 USE OF RECOVERED MATERIALS	Now “USE OF RECOVERED MATERIALS AND BIOBASED PRODUCTS”.
2823.403 Policy	Not Replaced.
2823.404 Procedures	Renamed “Agency affirmative procurement programs”.
Part 2824 Protection of Privacy and Freedom of Information.	Not Replaced.
2824.2 Freedom of Information Act	Not Replaced.

2824.202 Policy	Not Replaced.
2825.203 Evaluating Offers	Now 2825.204.
2825.3 BALANCE OF PAYMENT PROGRAM -	Not Replaced.
2825.3 Policy	[There were two sections labelled 2825.3] Not Replaced.
2825.9 Additional Foreign Acquisition Clause	Not Replaced.
2825.901 Omission of Audit Clause	Not Replaced.
2828.1 Bonds	Now BONDS AND OTHER FINANCIAL PROTECTIONS.
2828.2 Sureties	Now SURETIES AND OTHER SECURITY FOR BONDS.
2831.205-32 Precontract Costs	Not Replaced.
2832.903 Policy [under PROMPT PAYMENT]	Renamed "Responsibilities."
2842.15 Contractor Performance Information	Not Replaced.
2842.1502 Policy	Not Replaced.
2842.1503 Procedures	Not Replaced.
2845.105 Records of Government Property	Renamed, but still at 2845.105.
2845.505-14 Report of Government Property	Renamed, now at 2845.105-70.
2845.6 Reporting, Redistribution, and Disposal of Contactor Inventory	Now part of 2845.105-70.
2845.603 Disposal Methods	Not Replaced.
2852.102-270 Incorporation in Full Text	Not Replaced.
2852.201-70 Contracting Officer's Technical Representative	Renamed Contracting Officer's Representative (COR).
2852.211-70 Brand Name or Equal	Not Replaced.

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